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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 1511-81

UNION PACIFIC RAILROAD COMPANY, A. L. MOHLER,
J. M. HENRY, AND HENRY SWAGTER, APPELLANTS.

MAISON CITY AND FORT DODGE RAILROAD COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT.

(21,595.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No 799.

UNION PACIFIC RAILROAD COMPANY, A. L. MOHLER,
J. M. HENRY, AND HENRY SWAGTEK, APPELLANTS,

vs.

MASON CITY AND FORT DODGE RAILROAD COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT.

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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September Term, 1908, of said Court, before the Honorable Walter H. Sanborn and the Honorable William C. Hook, Circuit Judges, and the Honorable Charles F. Amidon, District Judge.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
*Clerk of the United States Circuit Court
of Appeals for the Eighth Circuit.*

Be it Remembered that heretofore, to-wit: on the fifteenth day of February, A. D. 1907, a transcript of record pursuant to an appeal allowed by the Circuit Court of the United States for the District of Nebraska, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the Union Pacific Railroad Company, *et al.*, were Appellants, and the Mason City and Fort Dodge Railroad Company was Appellee, which said transcript of record is in the words and figures following, to-wit:

(a)

1 Pleas, Before the Honorable William H. Munger,
Judge of the District Court of the United States for the
District of Nebraska, sitting in the Circuit Court of the United
States for the District of Nebraska, within the Eighth Judicial
Circuit, at the November 1906 term thereof.

Be it remembered, at the May 1903 term of the Circuit Court
of the United States for the District of Nebraska, and on the
12th day of August, 1903, the following decree was signed and
filed in said case, and duly entered of record in Journal No.
"2" of said court, to-wit:

Mason City & Fort Dodge Railroad Company, Complainant,
vs.
Union Pacific Railroad Company, Defendant.

This day came the complainant, the Mason City & Fort
Dodge Railroad Company, by its solicitors and counsel, Frank
B. Kellogg, James M. Woolworth, W. D. McHugh and C. A.
Severance, and the defendant, the Union Pacific Railroad Com-
pany, by John N. Baldwin, its solicitor and counsel, and the
said cause coming on to be heard upon the pleadings and proofs,
and after hearing the same, and the arguments of the respec-
tive solicitors and counsel, it is

Ordered, adjudged and decreed: That the complainant, its
successors, lessees and assigns by virtue of the matters
2 and things alleged in the bill of complaint, and sus-
tained by the proof at the hearing, is entitled to be ad-
mitted into the full, equal and joint use of the main and pass-
ing tracks of the Union Pacific Railroad Company, now lo-
cated and established, or which may hereafter be located and
established, from the eastern terminus of said tracks in Coun-
cil Bluffs, in the State of Iowa, to a connection with the Union
Stock Yards railroad and the other railroads connecting with
the Union Pacific Railroad at South Omaha, in the State of
Nebraska, including the bridge over which said tracks extend
across the Missouri River between the cities of Council Bluffs,
Iowa, and Omaha, Nebraska; also the connection with, and the
tracks pertaining thereto, of the general passenger station of
the said Union Pacific Railroad in Omaha, and said passenger
station and all tracks and facilities connected therewith; also
a connection with the side or spur tracks leading from the
main line to the lower grade of the sidings and spur tracks in
Omaha, and such extensions as may be hereafter made; also a
connection with the side tracks in Omaha on which to receive
from and deliver to said Union Pacific Railroad Company

freight which may be handled through the warehouses, or may be switched by the said Union Pacific Railroad Company; also the connections with the Union Stock Yards tracks in South Omaha, and with the tracks of all other railway companies, which now or may hereafter connect at or near South Omaha, with the tracks of the Union Pacific Railroad Company hereinbefore described, each and all, to the same extent and upon the same terms and conditions stated in the contracts between the Union Pacific Railroad Company and the Chicago & Northwestern Railway Company, the Chicago, Milwaukee & St. Paul

3 Railway Company, and the Chicago, Rock Island & Pacific Railway Company as appears by the contracts in evidence in this case, and the depot contract, and the supplemental contract between the same parties, being Exhibits 6 and 7 attached to the bill of complaint herein, without preference or discrimination.

That the Mason City & Fort Dodge Railroad Company is entitled to connect its tracks with the said tracks of the Union Pacific Railroad Company at the point in Council Bluffs, and in the manner shown upon the complainant's Exhibit No. 4D, and forever maintain and operate the same.

That the Mason City & Fort Dodge Railroad Company is entitled to make such connections between tracks which it now owns or may hereafter acquire, and the tracks hereinbefore described of the Union Pacific Railroad Company, as shall be necessary or convenient in the operation of its own line, or as may be necessary or convenient in its business as a common carrier, and forever maintain and operate such connection. That if said Mason City & Fort Dodge Railroad Company and said Union Pacific Railroad Company cannot agree upon the points at which such connections shall be made, or to the manner of making the same, application may be made to the court from time to time in this case for supplemental decrees fixing said points of junction, and the manner of making such connections.

It is further ordered, adjudged and decreed that the defendant, its officers, agents, attorneys and employees be, and they hereby are, forever enjoined, prevented and restrained from interfering in any way with said full, equal and joint use of said property as aforesaid, by the complainant, its successors, lessees and assigns, and the right to make said connections as

4 aforesaid; and they are ordered, required and mandatorily enjoined to permit the free use and right as herein before directed and stated, the compensation to be paid to the defendant to commence to accrue from the date the complainant commences the use of said property.

It is further ordered, adjudged and decreed that a writ of injunction issue out of this court, enjoining the said defendant,

its officers, agents, attorneys and employees from interfering in any way with the said full, equal and joint use of said property as in this decree allowed, and mandatorily enjoining them to permit the free use and right as hereinbefore directed and stated.

This court further reserves the power and right and jurisdiction to make such further order and decree as become necessary and proper on the premises in the future.

That complainant is entitled to its costs and disbursements herein, to be taxed and defendant at the time and in open court prayed for an appeal which is by the court allowed.

W. H. MUNGER, Judge.

Dated, Omaha, August 12th, 1903.

Endorsed: Filed Aug. 12, 1903. Geo. H. Thummel,
Clerk.

5 Thereupon afterwards, to-wit: On the 21st day of May, 1906 a Petition was filed in said case, which said Petition is in words and figures following, to-wit:

Mason City & Fort Dodge Railroad Company, Complainant,
vs.
Union Pacific Railroad Company, Defendant.

To the Honorable the Judges of the United States Circuit Court, in Equity sitting:

And now comes the Mason City & Fort Dodge Railroad Company, the complainant in the above entitled action, and for its petition herein, states and alleges as follows:

That heretofore, to-wit, on the 12th day of August, 1903, this Court made and entered its decree in the above entitled action, wherein, among other things, said court decreed that the complainant, its successors, lessees and assigns, were entitled to be admitted into the full, equal and joint use of the main and passing tracks of the Union Pacific Railroad Company, then located and established, or which might thereafter be located and established, from the eastern terminus of said tracks in Council Bluffs in the state of Iowa, to a connection with the Union Stockyards railroad and other railroads connecting with the Union Pacific Railroad at South Omaha in the state of Nebraska, including the bridge over which said tracks extend across the Missouri River between the cities of Council Bluffs, Iowa, and Omaha, Nebraska; also the connection with, and the tracks pertaining thereto, of the general passenger station of said Union Pacific Railroad in Omaha, and said passenger station and all tracks and facilities connected therewith; also the side or spur tracks leading from the main

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line to the lower grade; of the sidings and spur tracks in Omaha, and such extensions as may be hereafter made; also a connection with the side tracks in Omaha on which to receive and deliver to said Union Pacific Railroad Company freight which may be handled through the warehouses, or may be switched by said Union Pacific Railroad Company; also the connection with the Union Stockyards tracks in South Omaha, and with the tracks of all other railway companies which then were or might thereafter connect at or near South Omaha with the tracks of the Union Pacific Railroad Company, each and all to the same extent and upon the same terms and conditions stated in the contracts between the Union Pacific Railroad Company and the Chicago & Northwestern Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, and the Chicago, Rock Island & Pacific Railway Company, as appeared by the contracts in evidence, and also by the depot contract and supplementary contracts, all of which contracts were in evidence, and to which reference is hereby made for greater certainty.

It was further provided in said decree that the Mason City & Fort Dodge Railroad Company was entitled to make such connections between tracks which it then owned or might thereafter acquire, and the tracks hereinbefore described of the Union Pacific Railroad Company, as shall be necessary or convenient in the operation of its own line or as may be necessary or convenient in its business as a common carrier, and to forever maintain and operate such connections.

And it was further provided in said decree that the defendant, the Union Pacific Railroad Company, its officers, agents, attorneys and employees, be, and they hereby are forever enjoined, prevented and restrained from interfering in any way with said full, equal and joint use of said property as aforesaid, by the complainant, its successors, lessees and assigns; and the right to make said connections as aforesaid; and they, and each of them, were ordered, required, and mandatorily enjoined to permit the free use and right as hereinbefore directed and stated; and a writ of injunction was ordered to issue out of the court, enjoining the said defendants, its officers, agents, attorneys and employees, from interfering in any way with the said full, equal and joint use of said property as in the decree allowed and the mandatory injunction as therein directed.

Immediately thereafter, and on the 13th day of August, 1903, a writ of injunction was issued out of said court under the seal of said court, directed to the said Union Pacific Railroad Company, its officers, agents, attorneys and employees, which injunction was in the words and figures following, to-wit:

"The President of the United States; To the Union Pacific Railroad Company, and to its officers, agents, attorneys and employees:

Whereas, in the above entitled cause lately pending in the Circuit Court of the United States for the District of Nebraska after a hearing duly had, it was by said court on the 12th day of August, 1903, decreed that a writ of injunction issue in the above entitled cause out of this court enjoining the said Union Pacific Railroad Company, its officers, agents, attorneys and employees from interfering in any way with the full, equal and joint use of the railroad property in said decree described, and as in the said decree allowed, and also mandatorily enjoining the said Union Pacific Railroad Company, its officers, agents, attorneys and employees to permit to the complainant, its successors, lessees and assigns, the free use and right as in said decree provided:

Now therefore, know ye, that you, the Union Pacific Railroad Company, your officers, agents, attorneys and employees, and each of you, are hereby strictly restrained and enjoined from interfering in any way with the full, equal and joint use by the Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, of the main and passing tracks of the Union Pacific Railroad Company now located and established, or which may hereafter be located and established, from the eastern terminus of said tracks in Council Bluffs, in the State of Iowa, to a connection with the Union Stock Yards railroad, and the other railroads connecting with the Union Pacific Railroad at South Omaha, in the State of Nebraska, including the bridge over which said tracks extend across the Missouri River between the cities of Council Bluffs, Iowa, and Omaha, Nebraska; also from in any manner interfering with the full, equal and joint use by the Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, of the connection with, and the tracks pertaining thereto, of the general passenger station of the Union Pacific Railroad Company in Omaha; and from in any manner interfering with the full, equal and joint use by the said Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, of the said general passenger station of the Union Pacific Railroad Company in Omaha; and of the tracks and facilities connected therewith; also from in any manner interfering with the full, equal and joint use by the Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, of a connection with the side or spur tracks leading from the main line of said Union Pacific Railroad Company to the lower grade of the sidings and spur tracks in Omaha, and such extensions as may be hereafter made; also from in any manner interfering with the full, equal and joint use by the Mason

City & Fort Dodge Railroad Company, its successors, lessees and assigns, of a connection with the side tracks in Omaha, Nebraska, on which to receive from and deliver to, the said Union Pacific Railroad Company freight which may be handled through the warehouses, or may be switched by the said Union Pacific Railroad Company; also from in any manner interfering with the full, equal and joint use by the Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, of a connection with the Union Stock Yards Railroad's tracks in South Omaha, and with the tracks of all other railway companies which now are, or which may hereafter connect at or near South Omaha with the tracks of the Union Pacific Railroad Company hereinbefore described; the said full, equal and joint use of each and all of said properties, and every part thereof, to be without preference or discrimination, and upon the same terms and conditions as those under which the said property is used by the Chicago, & Northwestern Railway Company; the Chicago, Milwaukee & St. Paul Railway Company, and the Chicago, Rock Island & Pacific Railway Company, under their respective contracts with the Union Pacific Railroad Company, being the contracts with said companies introduced in evidence in the above entitled cause, together with the Depot contract and the supplemental contract between the same parties, being Exhibits Nos. 6 and 7 attached to the bill of complaint herein.

10 And you and each of you, are further strictly restrained and enjoined from in any way interfering with the said Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, in connecting its tracks with the said tracks of the Union Pacific Railroad Company at the point in Council Bluffs, Iowa, and in the manner as shown by the plat in evidence in the above entitled cause, identified as Complainant's Exhibit No. 4D, being the point where the right of way of the said Mason City & Fort Dodge Railroad Company meets that of the Union Pacific Railroad Company, and from in any manner interfering with the said Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, in forever maintaining and operating the said connection.

And you and each of you, are further strictly restrained and enjoined from in any manner interfering with the said Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, in making any connection between tracks it now owns, or may hereafter acquire, and the tracks above described of the Union Pacific Railroad Company, which connection shall be necessary or convenient in the operation of said line of the Mason City & Fort Dodge Railroad Company, or necessary or convenient in the business of said company, its successors, lessees and assigns, as a common carrier, and in forever maintaining and operating such connections.

And you, and each of you, are further strictly enjoined that you and each of you, permit the said Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, to make and forever maintain and operate the connections hereinbefore described and each and all of them.

And you, and each of you, are further hereby strictly enjoined that you, and each of you, permit the said Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, to enter into, and forever enjoy the full, equal and joint use of all the properties hereinbefore described.

Witness the Honorable Melville W. Fuller, Chief Justice of Supreme Court of the United States, this 13th day of August, 1903, and the seal of the Circuit Court of the United States for the District of Nebraska.

GEO. H. THUMMEL,

Clerk of the United States Circuit Court within and for the District of Nebraska.

[Seal]

By John Nicholson, Deputy."

That said decree has been affirmed by the Circuit Court of Appeals in and for the Eighth Circuit and by the Supreme Court of the United States, and the mandate from said court has been duly filed in the office of the Clerk of the Circuit Court as aforesaid;

That since the entry of said decree the Mason City & Fort Dodge Railroad Company purchased a large amount of property adjoining the tracks of the Union Pacific Railroad Company at and near Twentieth Street in the city of Omaha, for the purpose of constructing a freight house and yards connected therewith, for the proper transaction of its freight business in the city of Omaha; that it has graded said property, constructed freight houses thereon, laid tracks, and built and constructed a connection with the tracks of the Union Pacific Railroad Company at and near Twentieth Street;

That it was necessary in the operation of its said business and in order to deliver and handle freight to and from the city of Omaha and the business houses therein, to have such a freight terminal. That hereto attached and marked "Exhibit A" is a map and plat which shows the said freight terminals and the connection with the Union Pacific Railroad Company.

12 That after the said acquisition and construction of said property, the Mason City & Fort Dodge Railroad Company, and its lessee, the Chicago Great Western Railway Company, used the same as a freight terminal, and had the free and unobstructed use thereof, and of the connection with the tracks of the Union Pacific Railroad Company, until on or about the

27th day of April, 1906, when the Union Pacific Railroad Company, its officers, agents and servants, as hereinafter more particularly described, interfered with and prevented the free use thereof by the Mason City & Fort Dodge Railroad Company, and its lessee, the Chicago Great Western Railway Company;

That it is the right and duty of your petitioner as a common carrier, to engage in the transportation of the grain which is raised in the state of Nebraska and elsewhere. The transportation of grain requires special facilities at terminal stations like Omaha, of a class not required in the transportation of other commodities. It is necessary to have abundant accessible side tracks on which cars loaded with grain can be received and stored. The grain thus received must, as a rule, be transferred from the cars of other lines which bring the said grain to Omaha, into the cars of the line which receives it for further transportation east of Omaha; and as, during the grain season, the cars of all lines are taxed to their capacity, it is important that such transfer be made quickly. To undertake to transfer it by shovelling it from one car to another is expensive, both in respect to the labor involved and in respect to the time consumed, not only in the actual transfer, but in getting the empty car in juxtaposition to the loaded car. In the shovel transfer, it always required hours to so arrange the car, but

13 frequently the incoming loaded car must stand days before an empty car can be brought from a distance to which its load of grain can be transferred. To overcome this unnecessary expense and delay, it is necessary to provide grain elevators with storage capacity and rapidly working unloading and transferring machinery. Such an elevator is to the transportation system what a reservoir is to a water system. When the incoming stream is larger than the outgoing stream, the water accumulates in the reservoir, and the grain accumulates in the elevator awaiting the time when the outgoing stream shall become the larger, and thus the outgoing stream of grain can be maintained as a more or less constant quantity, which is an important factor in the economy of transportation.

One such elevator with a capacity to thus transfer six car loads of grain per hour and a storage capacity of two million bushels, occupies about three acres of land for the buildings alone, and for economical operations, requires two railway tracks passing through the building, with length enough on each side to hold, say ten hours' work, or sixty loaded cars, with an equal quantity of track on the other side to hold sixty cars after they are unloaded; or, say in all, six thousand lineal feet, or two tracks about half a mile in length.

That the city of Omaha is a large commercial center containing a population of about 150,000 people; is a large wholesale

manufacturing distributing center, having many lines of railroad centering therein or running through the same. It is well situated as a market town, has the advantage of railroads extending to the Gulf ports, to St. Louis, to Chicago and to eastern points, to Minneapolis and Duluth, the latter of which is a large lake port; and also extending through all the states, of Nebraska, South Dakota, Wyoming and Kansas, to the mountainous districts of Colorado, Wyoming, New Mexico and Arizona, and other western states and territories. It is in the center of a large grain-producing territory. At South Omaha there are large stockyards and packing houses, and Omaha is, and for many years has been, one of the largest livestock markets and packing house centers in the United States; that it has railroad and banking facilities and all other facilities for a large market town, and that by reason of its proximity to the grain fields and the numerous railroads ramifying to the aforesaid markets, and the geographical location of the said city of Omaha, its market is one of the most important to the producers of grain in the western country, it being so situated that grain and grain products can be readily handled, stored and shipped in all directions, and to all the markets east, west, north and south, if not discriminated against by the railroad companies reaching said city; and if it can have centrally located elevators which can be reached by all railroads centering in Omaha, it will be one of the most important grain markets in the United States.

In order to meet the demands upon your petitioner as a carrier of livestock and livestock products to and from the South Omaha market, it is necessary to provide facilities as all other roads have, in close proximity to the South Omaha stockyards, for storing empty cars awaiting their demand at said yards for use in the transportation of livestock; and in order to provide the necessary facilities for receiving cars loaded with grain, and for the storage of empty cars awaiting demand for such cars in the transportation of livestock, and the storage of empty grain cars awaiting the demand for such cars in the transportation of grain, and generally for a grain terminal, your petitioner has purchased at great expense, real estate adjoining that portion of the Union Pacific Railroad, which under the decree in this case your petitioner is entitled to use, and which is shown upon a map hereto attached. That said real estate is described as follows:

“Beginning at a point in the westerly line of the right of way of the Union Pacific Railroad at the junction with said right of way with the south line of Lot 18 in Block 18 of Summit Addition to Omaha; thence running westerly on the said south line of said Lot 18 to the southwest corner of said lot; thence in a northeasterly direction in a straight line to the southeast

corner of Lot 26 in Block 2, of Oberne & Hosick's Addition to Omaha; thence northeasterly along the easterly line of Lots 26, 25, 24, 23, 22, 21 and 20, to the west line of the north and south alley through the said Block 2 of Oberne & Hosick's Addition; thence north along the said west line of said alley and said west line extended north to an intersection with the southerly line of the alley in Woodlawn Addition to Omaha; thence northeasterly following said south line of said alley and said line produced to the intersection of the westerly line of the right of way of said Union Pacific Railroad's right of way 4200 feet more or less, to the place of beginning, containing ten acres, more or less.

That said real estate is now owned by your petitioner, and on it your petitioner has constructed a large number of tracks for the purposes herein mentioned.

Your petitioner further represents to the court that in order to provide the necessary elevators and their special facilities, it has purchased at great expense about twenty-two acres of land adjoining the foregoing described real estate, the title of which it has caused to be conveyed to the Omaha Grain Terminals, a corporation of the State of Nebraska, every share of the capital stock of said corporation being owned by your
16 petitioner;

That your petitioner has caused to be constructed an elevator with a capacity of transferring at least six cars per hour, and a storage capacity of one million bushels; and has constructed about five thousand feet of track for the use of said elevator; and your petitioner further states that it has made arrangements for the construction of another large elevator upon said property, having an equal capacity, with a view to accommodating the grain business naturally tributary to the City of Omaha.

That in order that the said grain terminal and elevators may be made available for the public and your petitioner, and to accommodate the grain business, it is necessary that any road desiring to do so should have the right to deliver grain to the said elevators upon the tracks of your petitioner, and your petitioner is willing that such companies should do so; and that said grain will have to be so delivered without excessive intermediate switching charges, in order that the said market may compete with other markets and be made available to accommodate the grain business.

That the tracks so constructed by your petitioner upon said property have been connected with the tracks of the Union Pacific Railroad Company, as shown on the map hereto attached marked Exhibit B. That said map shows the grain terminals, the location of the elevators and the tracks situated thereon, and the said connection with the tracks of the Union Pacific

Railroad Company. That said connection being a temporary connection, and your petitioner being unable to agree with the Union Pacific Railroad Company upon the points at which permanent connections should be made at each end of said grain terminal, or as to the manner of making the same, your
17 petitioner filed in this court its petition asking the court to fix the place and manner of making such connections.

That thereafter and on or about the 7th day of March, 1906, the Mason City & Fort Dodge Railroad Company, and the Union Pacific Railroad Company having agreed upon said connections, a decree was ordered by consent of the parties, a copy of which decree is hereto attached and made a part of this petition.

That your petitioner has used the said connection to and from said grain terminals unobstructed by the said Union Pacific Railroad Company, its officers, agents and servants, until about the 27th day of April, 1906, when the said Union Pacific Railroad Company, its officers, agents and servants, as hereinafter more particularly described, interfered with and prevented the free use thereof by the Mason City & Fort Dodge Railroad Company, and its lessee the Chicago Great Western Railway Company.

Your petitioner further states that there are various railroads connecting with the tracks of the Union Pacific Railroad Company at or near South Omaha, Nebraska, and at Council Bluffs, Iowa, which railroads use the intermediate tracks under various contracts, as more particularly appears in the record in this cause.

That the Chicago, Rock Island & Pacific Railway Company owns a line of railroad extending from Chicago to Council Bluffs, and from South Omaha to Denver, and other places; that the said company is a large grain carrier to Omaha; that its tracks connect with the tracks of the Union Pacific Railroad Company at Council Bluffs, and also about a mile west of the South Omaha depot of the Union Pacific Railroad Company in South Omaha, as shown upon the maps already in evidence in this cause; and that the only connection between the eastern and western systems of the said railroad Com-
18 pany is the tracks of the said Union Pacific Railroad Company from its eastern terminus to its said last mentioned point of connection, which said tracks and all connections therewith of other companies, the Rock Island Company has a right to use. That the said Chicago, Rock Island & Pacific Railroad Company operates its said two systems as a continuous line of railroad, running its trains, both passenger and freight, both easterly and westerly, over its said several systems, using as a part thereof, and for its purpose, the said

tracks of the Union Pacific Railroad Company, forming said connection as above set forth.

And your petitioner further avers that the deliveries of freight by said Rock Island Company consigned to the city of Omaha or to the city of South Omaha, or to any other railroad company, must be made from the said tracks of the Union Pacific Railroad Company, used by said Rock Island Company as herein set forth, whether said freight is to be delivered to consignees in said cities, or to connecting carriers, and all freight delivered to said Rock Island Company either by consignors or by connecting carriers at the cities of Omaha and South Omaha, must be transported over said tracks of said Union Pacific Railroad Company;

Your petitioner further alleges that on the 27th day of April, 1906, the Union Pacific Railroad Company, its officers, agents, and servants, to-wit: A. L. Mohler, the General Manager of said defendant company; one J. M. Henry, the yardmaster of said defendant company; and one ——— Swagtk (whose first name is to the petitioner unknown) a switch-tender thereof, and other agents and employees of said company, unknown to your petitioner, in violation of the said decree and writ of injunction, interfered with the full, equal and joint use of said main and passing tracks covered by said decree and the
19 right to make connections, by your petitioner and its lessee, the Chicago Great Western Railway Company, more particularly as follows:

That on the said 27th day of April, 1906, the Chicago Great Western Railway Company and your petitioner, with an engine undertook to deliver a car of stucco consigned and to be delivered to the Chicago, Rock Island & Pacific Railway Company at its connection at South Omaha, as herein described, and that the said switch-tender, ——— Swagtk, and the yardmaster J. M. Henry, as your petitioner believes, under the orders of A. L. Mohler, the General Manager, refused to allow your petitioner or the said Chicago Great Western Railway Company to make said delivery or to run its engine on to the track of the Chicago Rock Island & Pacific Railway Company, or to make a connection with the said Chicago Rock Island & Pacific Railway Company, or to use said connection, as they were so required to do under said decree and by said writ of injunction. That thereupon the agents and servants in charge of said engine undertook to open the said switch, and did so open the said switch for the purpose of delivering said car to the Chicago Rock Island & Pacific Railway Company, whereupon the said Swagtk ran an engine directly in front of the engine being used by your petitioner and very nearly caused a collision, and by force prevented your petitioner making such connection and delivering the said car to the Chicago Rock Island & Pacific

Railway Company, Your petitioner alleges that said switch-tender, yardmaster and other agents and servants, acted under the orders and directions of A. L. Mohler, and in intentional violation of the said decree and writ of injunction.

Your petitioner further alleges that the Chicago Great Western Railway Company has a lease and the right to use
20 all the tracks of the Mason City & Fort Dodge Railroad Company, and that the said Chicago Great Western Railway Company and the Mason City & Fort Dodge Railroad Company duly demanded of the said Union Pacific Railroad Company and of the said A. L. Mohler, the General Manager thereof, the right to use the said tracks for the purpose of making said connection and delivering freight to the said Rock Island Company and of receiving freight from the said Rock Island Company, which said request was refused in violation of said decree and writ of injunction, and that ever since said time the said defendant and the said Mohler, the General Manager, J. M. Henry, the yardmaster, and the said — Swagtk, the switchtender, by force have prevented your petitioner and the Chicago Great Western Railway Company from using the said main and passing tracks of the Union Pacific Railroad Company and the said connection with the Rock Island Company, for the purpose of delivering the cars to the Chicago Rock Island & Pacific Railway Company as aforesaid.

Your petitioner further alleges that the said Union Pacific Railroad Company, the said A. L. Mohler, the General Manager thereof, and the said J. M. Henry, yardmaster, have forcibly and in violation of said injunction, placed Yale locks on the switches leading to the freight yards of the Mason City & Fort Dodge Railroad Company at Twentieth Street in the City of Omaha, and on the switch leading to the said grain terminal near Martha Street, and have placed a man in charge of said switches, both night and day, since the 27th day of April, 1906, and have forcibly and wrongfully prevented your petitioner from receiving from the Chicago Rock Island & Pacific Railway Company, freight cars loaded with freight to be delivered to the said freight terminals and the said grain elevators, as
21 your petitioner has a right to receive said cars; that the said Chicago Rock Island & Pacific Railway Company has a right to deliver cars of grain or other cars to your petitioner, upon said grain terminals and also upon said freight terminals, and your petitioner has a right to receive the said cars, but that the said defendant, the said Mohler, and the said Henry, have forcibly and unlawfully prevented your petitioner from receiving said cars.

Wherefore, your petitioner prays that an order be issued out of this court directed to the said Union Pacific Railroad Company, the said A. L. Mohler, J. M. Henry and — Swagtk,

commanding them to appear before this court at a day to be named and show cause why they should not be punished for contempt in disobeying the decree and injunction of this court, and that your petitioner have such other and further relief as may be consistent with equity.

MASON CITY & FORT DODGE RAILROAD COMPANY,

By A. B. Stickney,
President.

22 United States Circuit Court, District of Nebraska.
November, 1905 Term. Omaha, Nebraska.
March 7th, 1906. •

Court opened pursuant to adjournment.

Present: Hon. William H. Munger, Judge.

The following among other proceedings were had and done, to-wit:

Mason City & Fort Dodge Railroad Company, Complainant,
vs.

Union Pacific Railroad Company, Defendant.

Decree.

This matter came on to be heard before the Court upon an order to show cause why the prayer of the petition of the complainant should not be granted, fixing the place of certain connections. Said petition was filed in the office of the Clerk of this court on the 1st day of March, 1906.

Now therefore, by consent of the parties hereto, it is

Ordered, adjudged and decreed, that if the Union Pacific Railroad Company shall, within three months from the date of this decree (subject, however, to delay by reason of strikes or unavoidable casualties), construct, at its own expense, a special track from the connection with the Mason City & Fort Dodge Railroad Company's track on Lot eighteen (18), Block eighteen (18), of Summit Addition to Omaha, southerly along the westerly line of the Union Pacific Railroad Company's right of way to a connection with its main tracks at some point within two thousand feet from said place of commencement, the Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns shall forever have the right, upon paying to said Union Pacific Railroad Company, monthly, as
23 rental, a sum equal to one-twelfth of five (5) per cent interest per annum on the cost of said track and connection (exclusive of the value of the right of way), to run its cars, engines and trains over said track to and from

said main tracks of the Union Pacific Railroad Company, to the same extent and to have the same use thereof as it would over the track and connection prayed for in the petition were the same constructed at the point and in the manner prayed for in the petition.

And if the said Union Pacific Railroad Company shall fail to construct said track within the time specified, then the Mason City & Fort Dodge Railroad Company shall have the right to make the connection prayed for in said petition.

And with the consent of the parties hereto, it is further

Ordered, adjudged and decreed: That all other railroad companies having traffic or contractual relations with the Union Pacific Company for the use of its tracks between Council Bluffs and South Omaha, or any part thereof, shall, upon payment to the Mason City & Fort Dodge Railroad Company of a fair proportion of the rental reserved, forever have the same rights and privileges upon the track thus constructed, no more and no less, than such railroad companies would have upon the tracks and connections prayed for in the petition if said connections were made at the point and in the manner prayed for in the complainant's petition.

Except as herein otherwise provided, the Union Pacific Railroad Company shall have the same duties in respect to the track hereinbefore provided for, and shall have the same use of and control over said track, as it has under the original decree herein in respect to its main and passing tracks.

And all questions as to liability for accidents or injuries shall be regulated by the original decree.

By consent of the parties hereto, it is further

Ordered, adjudged and decreed: That, in lieu of the connection asked for in the petition at or near Martha Street, the Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, shall forever have the right to run its cars, engines and trains over the tracks provided for in the temporary contract made and entered into on the 27th day of December, 1904, by and between the Mason City & Fort Dodge Railroad Company and the Union Pacific Railroad Company, a copy of which contract is attached hereto, upon the payment of the rental therein provided, and shall forever have the right to run its cars, engines and trains over said track, to and from the main tracks of the Union Pacific Railroad Company, to the same extent, and have the same use thereof, as it would have over the tracks and connections prayed for in the petition if such connection should be made in accordance with the prayer of the petition.

And with the consent of the parties hereto, it is further

Ordered, adjudged and decreed: That all other railroad companies having traffic or contractual relations with the Union Pacific Railroad Company, for the use of its tracks between Council Bluffs and South Omaha, or any part thereof, shall, upon the payment to the Mason City & Fort Dodge Railroad Company of a fair proportion of the rental reserved, forever have the same rights and privileges upon the track last mentioned, no more and no less, than such companies would have upon the tracks at or near Martha Street prayed for in the petition if such connection were made at the point and in the manner prayed for in complainant's petition.

25 Except as herein otherwise provided, the Union Pacific Railroad Company shall have the same duties in respect to said track, and shall have the same use of and control over said track, as it has under the original decree herein in respect to its main and passing tracks.

And all questions as to liability for accidents and injuries shall be regulated by the original decree.

And with the consent of the parties hereto, it is further

Ordered, adjudged and decreed: That if at any time the Union Pacific Railroad Company shall construct any interlocking plant which shall include any crossings or connections with the tracks of the Mason City & Fort Dodge Railroad Company, its successors, lessees or assigns, the Union Pacific Railroad Company shall have the right to charge the Mason City & Fort Dodge Railroad Company and the Mason City & Fort Dodge Railroad Company shall pay to the Union Pacific Railroad Company, a fair proportion of the cost of installation, maintenance and operation of said interlocking plant.

March 7th, 1906.

W. H. MUNGER, Judge.

Approved: John N. Baldwin.

26 Attached to said decree is a copy of said contract above referred to, which said copy of contract is in words and figures following, to-wit:

Copy. Auditor's File 2350.

This agreement, made and entered into this 27th day of December, A. D. 1904, by and between the Mason City & Fort Dodge Railroad Company, a corporation organized and existing under and by virtue of the laws of the state of Iowa, party of the first part, and Union Pacific Railroad Company, a corporation organized and existing under and by virtue of

the laws of the state of Utah, part of the second part: witnesseth: That

Whereas, the Mason City & Fort Dodge Railroad Company has acquired a tract of ground extending southwardly and southwesterly from a point near Martha Street in the City of Omaha, and adjoining the right of way of Union Pacific Company, upon which tract of ground the party of the first part proposes to lay tracks, along which certain elevators and industries are proposed to be constructed and located; and,

Whereas, said party of the first part desires a connection between its tracks so to be constructed upon said tract of ground and the tracks of the party of the second part; and,

Whereas, the said party of the second part is willing that said connection shall be made under the terms and conditions hereinafter set forth;

Now therefore, it is agreed by and between the parties hereto that said party of the second part will construct or provide along and upon its right of way in the city of Omaha, a track from the point of its present connection with the tracks of the party of the first part at or near Twentieth Street, southwardly to a suitable connection with the said tract of
27 ground of the party of the first part and the tracks to be laid thereon, at or near Martha Street, as shown and indicated, on the plat attached hereto and made a part hereof, marked "Exhibit A."

Said party of the second part further agrees that the said party of the first part shall have the joint use and occupation with the party of the second part of the said track, for the operation of its business and the use of its locomotives, trains and cars, and said party of the second part shall maintain and keep said track in repair, and keep the same open for the use of the party of the first part as hereinabove provided, at its own cost and expense. Said track between the junction near the west side of Twentieth Street and the westerly terminus near the west side of Martha Street, shall not be used by the party of the first part for switching cars to or from industries located upon or adjacent to said track between said points, nor by either party as a standing place for cars. Each party assumes all liability for loss of or damage to property and for injuries to persons as to its own trains, property and employees.

The operation of all engines, cars and trains on said tracks, shall be under the rules and regulations of Union Pacific Railroad Company, with priority of right in the movement of engines, cars and trains to those of Union Pacific Railroad Company.

Said party of the second part further agrees to put in and

make the connection with the said tracks as hereinbefore provided, at its own cost and expense.

In consideration whereof, the said party of the first part agrees to pay to said party of the second part, as a fixed rental for the use of said track and connections, the sum of
28 eight hundred dollars (\$800.00) per annum, payable monthly.

That because of the fact that the party of the first part desires the immediate use of the said tract of land hereinbefore referred to, and desires at once to have a convenient connection for the purpose of hauling material on said tract of ground, the said party of the second part agrees that as soon as it can be done, it will make a temporary connection at or near Martha Street between the present tracks and the said tract of ground, and the said tracks to be constructed thereon, and to permit the party of the first part to use said temporary tracks and connection for said purpose.

It is further agreed by and between the parties hereto that this agreement is made subject to the rights of the parties hereto, which may hereafter be determined in the case of Union Pacific Railroad Company, appellant, against the Mason City & Fort Dodge Railroad Company, appellee, now pending in the Supreme Court of the United States, and that this agreement shall in no way affect said cause, and that neither party hereto, by entering into this agreement, waives any rights asserted in said cause, and that this agreement shall be without prejudice to any of said rights.

In witness whereof, the parties hereto have executed this agreement in duplicate by their respective General Managers thereunto duly authorized, the day and date first above written.

MASON CITY & FORT DODGE RAILROAD COMPANY,

By (signed) A. B. Stickney,
Its President.

In presence of
(signed) W. R. Kelly.

29

UNION PACIFIC RAILROAD COMPANY,

By (signed) A. L. Mohler,
Its General Manager.

In presence of
(signed) W. R. Kelly.

Copy.

Endorsed.: Filed Mar. 7, 1906. Geo. H. Thummel, Clerk.

United States of America,
District of Nebraska—ss.

I, Geo. H. Thummel, Clerk of the Circuit Court of the United States for the District of Nebraska, do hereby certify the above and foregoing to be a true and correct copy of the Journal Entry of the proceedings of said court, in the above entitled action, as the same appears of record in my office.

Witness my hand and the seal of said court at Omaha, in said District, this 8th day of March, A. D. 1906.

(Signed) GEO. H. THUMMEL, Clerk.

By _____ Deputy.

State of Minnesota,
County of Ramsey.

A. B. Stickney came before me personally, and being duly sworn, doth say that he is the President of the Mason City & Fort Dodge Railroad Company, complainant in the above entitled action; that the foregoing is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

A. B. STICKNEY,

Subscribed and sworn to before me on this 19th day of May, A. D. 1906.

[Notarial Seal]

GUY CHASE,

Notary Public, Ramsey County, Minn.

My commission expires August 1, 1910.

Endorsed: Filed May 21, 1906. Geo. H. Thummel,
Clerk.

31 Thereupon afterwards, to-wit: At the May 1906 Term of said Court and on the 21st day of May, 1906, the following Order was signed and filed in said case and duly entered of record in Journal No. 5 of said Court, to-wit:

Mason City & Fort Dodge Railroad Company, Complainant,
vs.

Union Pacific Railroad Company, Defendant.

Order.

Whereas, the Mason City & Fort Dodge Railroad Company filed its petition in this court in the above entitled action on the 21st day of May, 1906, wherein it alleged, among other things, that the Union Pacific Railroad Company, A. L. Mohler, the general manager of said company, J. M. Henry, the yard-master of said company, and one Swagtk (whose first name is to the petitioner unknown), a switch-tender of said company, in violation of the decree and writ of injunction heretofore issued in this case, interfered with and prevented the petitioner and its lessee from having the full, equal and joint use of the main and passing tracks of the Union Pacific Railroad Company, now located and established from the eastern terminus of said tracks in Council Bluffs, in the State of Iowa, to a connection with the Union Stockyards railroad and the other railroads connecting with the Union Pacific Railroad Company's tracks at South Omaha, and more especially in preventing the petitioner, its successors, lessees and assigns, from using the connection with the tracks of the Chicago, Rock Island & Pacific Railway Company about one mile west of the station in South Omaha, and from having the free and uninterrupted use of the connection between the Union Pacific

32 Railroad Company's tracks, aforesaid, to the tracks of the Mason City & Fort Dodge Railroad Company on its grain terminal, and upon its freight terminals, as by said petition more fully appears.

And whereas the petitioner prayed the order of this court that the said Union Pacific Railroad Company, the said A. L. Mohler, the said J. M. Henry, and the said Swagtk, show cause before this court, at a time to be fixed by the Court, why they and each of them should not be punished for contempt in disobeying the decree and writ of injunction of this court.

Now therefore, it is ordered, that the Union Pacific Railroad Company, the defendant in the above-entitled action, A. L. Mohler, the general manager thereof, J. M. Henry, the yard-master, and the said Swagtk, switch-tender for said company, and each of them, show cause before this court, on the 2d day of June, 1906, at 9:30 o'clock A. M. of said day, why they and each of them should not be adjudged guilty of contempt of this court, and punished for violating the said decree and writ of

injunction; and that a copy of this order, together with a copy of said petition, be served upon the said defendants within three days from the date hereof.

W. H. MUNGER, Judge.

Dated: Omaha, Nebraska, May 21, 1906.

Endorsed: Filed May 21, 1906. Geo. H. Thummel, Clerk.

33 Thereupon afterwards, to-wit: On the 30th day of June, 1906, a Petition and Application for Modification of the Decree Filed Herein was filed in said case, which said Petition and Application for Modification of the Decree filed herein, is in words and figures following, to-wit:

In the Circuit Court of the United States within and for the District of Nebraska.

Mason City & Fort Dodge Railroad Company, Complainant,
vs.

Union Pacific Railroad Company, Defendant.

To the Honorable, The Judges of the Circuit Court of the United States within and for the District of Nebraska, in Equity Sitting:

Comes now Union Pacific Railroad Company, the defendant in the above entitled action, files this its Petition and Application for a modification of the Decree heretofore rendered and entered herein, and in reference thereto states and alleges as follows:

That on the 12th day of August, 1903, this Court made and entered its decree in the above entitled action, wherein, amongst other things, this Court decreed that the Complainant herein, its successors, lessees and assigns, were given the right to run their trains over the main and passing tracks of Union Pacific Railroad Company, then located and established, or which might thereafter be located and established, from the eastern terminus of said tracks in Council Bluffs, in the state of Iowa, to the city of South Omaha, Nebraska, which said decree was in words and figures as follows, to-wit:

34 "This day came the complainant, the Mason City & Fort Dodge Railroad Company, by its solicitors and counsel, Frank B. Kellogg, James M. Woolworth, W. D. McHugh and C. A. Severance, and the defendant, the Union Pacific Railroad Company, by John N. Baldwin, its solicitor and counsel, and the said cause coming on to be heard upon the pleadings and proofs, and after hearing the same, and the arguments of the respective solicitors and counsel, it is

Ordered, adjudged and decreed: That the complainant, its successors, lessees and assigns by virtue of the matters and

things alleged in the Bill of Complaint, and sustained by the proofs at the hearing, is entitled to be admitted into the full, equal and joint use of the main and passing tracks of the Union Pacific Railroad Company, now located and established or which may hereafter be located and established, from the eastern terminus of said tracks in Council Bluffs, in the State of Iowa, to a connection with the Union Stock Yards railroad and the other railroads connecting with the Union Pacific Railroad at South Omaha, in the state of Nebraska, including the bridge over which said tracks extend across the Missouri River between the cities of Council Bluffs, Iowa, and Omaha, Nebraska; also the connection with and the tracks pertaining thereto, of the general passenger station of the said Union Pacific Railroad in Omaha, and said passenger station and all tracks and facilities connected therewith; also a connection with the side or spur track leading from the main line to the lower grade of the sidings and spur tracks in Omaha, and such extensions as may be hereafter made; also a connection with the side tracks in Omaha on which to receive from and deliver to said Union Pacific Railroad Company freight which may be

35 handled through the warehouses, or may be switched by the said Union Pacific Railroad Company; also the connections with the Union Stock Yards tracks in South Omaha and with the tracks of all other railway companies, which now or may thereafter connect at or near South Omaha, with the tracks of the Union Pacific Railroad Company hereinbefore described, each and all, to the same extent and upon the same terms and conditions stated in the contracts between the Union Pacific Railroad Company and the Chicago & Northwestern Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, and the Chicago, Rock Island & Pacific Railway Company, as appears by the contracts in evidence in this case, and the Depot contract, and the Supplemental contract between the same parties, being Exhibit Nos. 6 and 7, attached to the Bill of Complaint herein, without preference or discrimination.

That the Mason City & Fort Dodge Railroad Company is entitled to connect its tracks with the said tracks of the Union Pacific Railroad Company at the point in Council Bluffs, and in the manner shown upon the complainant's Exhibit No. 4d, and forever maintain and operate the same.

That the Mason City & Fort Dodge Railroad Company is entitled to make such connections between tracks which it now owns, or may hereafter acquire, and the tracks hereinbefore described of the Union Pacific Railroad Company, as shall be necessary or convenient in the operation of its own line, or as may be necessary or convenient in its business as a common carrier, and forever maintain and operate such connection.

That if said Mason City & Fort Dodge Railroad Company and said Union Pacific Railroad Company cannot agree upon the points at which such connections shall be made, or to the manner of making the same, application may be had to the court from time to time in this case for supplemental decrees
36 fixing said points of junction, and the manner of making such connections. It is further

Ordered, adjudged and decreed, that the defendant, its officers, agents, attorneys and employes be, and they thereby are, forever enjoined, prevented and restrained from interfering in any way with said full, equal and joint use of said property as aforesaid, by the complainant, its successors, lessees and assigns, and the right to make said connections as aforesaid; and they are ordered, required and mandatorily enjoined to permit the free use and right as hereinbefore directed and stated, the compensation to be paid to the defendant to commence to accrue from the date the complainant commences the use of said property. It is further

Ordered, adjudged and decreed, that a writ of injunction issue out of this court, enjoining the said defendant, its officers, agents, attorneys and employes from interfering in any way with the said full, equal and joint use of said property as in this decree allowed, and mandatorily enjoining them to permit the free use and right as hereinbefore directed and stated.

This court further reserves the power and right and jurisdiction to make such further orders and decree as become necessary and proper in the premises in the future.

That complainant is entitled to its costs and disbursements herein, to be taxed, and defendant at the time and in open court prayed for an appeal, which is by this court allowed."

That on the 13th day of August, 1906, following the decree above set out, a writ of injunction was issued out of this court under the seal of said court, directed to said Union Pacific Railroad Company, its officers, agents, attorneys and employes, which injunction was in words and figures as follows, to-wit:

37 "The President of the United States: To the Union Pacific Railroad Company, and to its officers, agents, attorneys and employes:

Whereas, in the above entitled cause lately pending in the Circuit Court of the United States for the District of Nebraska, after a hearing duly had, it was by said court on the 12th day of August, 1903, decreed that a writ of injunction issue in the above entitled cause out of this court enjoining the said Union Pacific Railroad Company, its officers, agents, attorneys and employes from interfering in any way with the full equal and joint use of the railroad property in said decree described, and

as in the said decree allowed, and also mandatorily enjoining the said Union Pacific Railroad Company, its officers, agents, attorney and employes to permit to the complainant, its successors, lessees and assigns, the free use and right as in said decree provided;

Now therefore, know ye, that you, the Union Pacific Railroad Company, your officers, agents, attorneys and employes and each of you, are hereby strictly restrained and enjoined from interfering in any way with the full, equal and joint use by the Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, of the main and passing tracks of the Union Pacific Railroad Company, now located and established, or which may hereafter be located and established, from the eastern terminus of said tracks, in Council Bluffs, in the state of Iowa, to a connection with the Union Stock Yards railroad and the other railroads connecting with the Union Pacific Railroad at South Omaha, in the State of Nebraska, including the bridge over which said tracks extend across the Missouri River

38 between the cities of Council Bluffs, Iowa, and Omaha, Nebraska; also in any manner interfering with the full, equal and joint use by the Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, of the connection with, and the tracks pertaining thereto, of the general passenger station of the Union Pacific Railroad Company in Omaha; and from in any manner interfering with the full, equal and joint use by the said Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, of the said general passenger station of the Union Pacific Railroad Company in Omaha; and of the tracks and facilities connected therewith; also from in any manner interfering with the full, equal and joint use by the Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, of a connection with the side or spur tracks leading from the main line of said Union Pacific Railroad Company to the lower grade of the sidings and spur tracks in Omaha, and such extensions as may be hereafter made; also from in any manner interfering with the full, equal and joint use by the Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, of a connection with the side tracks in Omaha, Nebraska, on which to receive from, and deliver to, the said Union Pacific Railroad Company freight which may be handled through the warehouses, or may be switched by the said Union Pacific Railroad Company; also from in any manner interfering with the full, equal and joint use by the Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns of a connection with the Union Stock Yards Railroad's tracks in South Omaha, and with the tracks of all other railway companies which now are, or which may hereafter connect at or near South Omaha with the tracks

of the Union Pacific Railroad Company hereinbefore described; the said full, equal and joint use of each and all of said properties, and every part thereof, to be without preference or
39 discrimination, and upon the same terms and conditions as those under which the said property is used by the Chicago & Northwestern Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, and the Chicago, Rock Island & Pacific Railway Company, under their respective contracts with the Union Pacific Railway Company, being the contracts with said companies introduced in evidence in the above entitled cause, together with the Depot contract and the Supplemental contract between the same parties, being Exhibits Nos. 6 and 7 attached to the bill of complaint herein.

And you, and each of you, are further strictly restrained and enjoined from in any way interfering with the said Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, in connecting its tracks with the said tracks of the Union Pacific Railroad Company at the point in Council Bluffs, Iowa, and in the manner as shown by the plat in evidence in the above entitled cause, identified as Complainant's Exhibit No. 4D, being the point where the right of way of the said Mason City & Fort Dodge Railroad Company meets that of the Union Pacific Railroad Company, and from in any manner interfering with the said Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, in forever maintaining and operating the said connection.

And you, and each of you, are further strictly restrained and enjoined from in any manner interfering with the said Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, in making any connection between tracks it now owns, or may hereafter acquire, and the tracks above described of the Union Pacific Railroad Company, which connection shall
40 be necessary or convenient in the operation of said line of the Mason City & Fort Dodge Railroad Company, or necessary or convenient in the business of said company, its successors, lessees and assigns, as a common carrier, and in forever maintaining and operating such connection.

And you, and each of you, are further strictly enjoined that you and each of you, permit the said Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns, to make and forever maintain and operate the connections hereinbefore described and each and all of them.

And you, and each of you, are further hereby strictly enjoined that you, and each of you, permit the said Mason City and Fort Dodge Railroad Company, its successors, lessees and assigns, to enter into and forever enjoy the full, equal and joint use of all the properties hereinbefore described.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 13th day of August, 1903, and the seal of the Circuit Court of the United States for the District of Nebraska."

That the said decree has been affirmed by the Circuit Court of Appeals within and for the Eighth Circuit, and by the Supreme Court of the United States, and the mandate from the last named court has been duly filed in the office of the clerk of this court.

This defendant further shows to the court that the terms and conditions of the foregoing decree, and of the writ of injunction, with reference to the rights and privileges accorded to the said complainant in this case, are broader and more comprehensive than contemplated by the Bridge Act of 1871, or any of the contracts between this defendant and the Chicago & Northwestern Railway Company, the Chicago, Milwaukee &

41 St. Paul Railway Company, and the Chicago, Rock Island & Pacific Railway Company; that in the pleadings, decrees and briefs of all the parties to this cause, during the course of this case through the various courts, from this court to the Supreme Court of the United States, it was contended by the said complainant that it should be accorded only such rights and privileges as were fairly within the terms of the Bridge Act of 1871, and on a par with the rights and privileges granted the railroads last above named, by the terms of the contracts between said roads and this defendant, and in entering the said decree above set out, it was the intent of this court, that the said complainant herein should be accorded only such rights and privileges as could be inferred from a fair and reasonable construction of the said Bridge Act of 1871.

This defendant further shows to the court that the decree and writ of injunction in this case above set forth, give to the complainant greater rights than were intended by this court in entering said decree, and greater rights than the complainant is entitled to under the terms of the Act of Congress of 1871, and the contracts between this defendant and the roads hereinbefore mentioned, in this, to-wit: That the decree gives to the complainant a right of connection with "the other railroads connecting with the Union Pacific Railroad Company at South Omaha, in the State of Nebraska," and "and with the tracks of all other railroads which now or may hereafter connect at or near South Omaha."

This defendant further shows to the court that the right to connect with the roads connecting with this defendant at South Omaha other than the tracks of the Union Stock Yards Company, is a right not granted either to the Chicago & Northwestern Railway Company, the Chicago, Milwaukee & St. Paul

42 Railway Company, or the Chicago, Rock Island & Pacific Railway Company, by the terms of the several contracts between said companies and this defendant; that the right of physical connection, as given by the decree, was not contemplated by the Act of Congress of 1871; that the only right contemplated by said Act, and by the contracts hereinbefore referred to, was a running right over the main and passing tracks of this defendant including the bridge between its terminus at Council Bluffs, Iowa, and South Omaha, Nebraska.

This defendant further shows to the court that by the terms of said decree the complainant is entitled to be admitted into the full equal and joint use of the main and passing tracks of this defendant, now located and established, or which may hereafter be located and established, from the eastern terminus of said tracks in Council Bluffs, in the State of Iowa, to a connection with the Union Stockyards Railroad, and the other railroads connecting with this defendant at South Omaha, in the State of Nebraska, including the bridge; that said right of full equal and joint use, as provided for by the terms of said decree is in excess of the rights contemplated by the Act of Congress of 1871, and is in excess of the rights and privileges guaranteed to the complainant by the terms of said act.

That said decree further gave to the complainant a right of connection "with the side or spur track leading from the main line to the lower grade of the sidings and spur tracks in Omaha and such extensions as may be hereafter made," and this defendant shows to the court that the right to use the connection with said side or spur track leading from the main line to the lower grade of the sidings and spur tracks in Omaha, would give the complainant the right to enter upon any portion of the yards, team tracks or terminal tracks of this defendant,
43 as located in the city of Omaha, and that said right so conferred upon the complainant in said decree is contrary to the spirit of the Act of Congress of 1871, upon which the decree in this case is based, and contrary and in excess of the running right over the main and passing tracks between Council Bluffs and South Omaha and that the exercise of the right in that behalf by the complainant in this case, would give the complainant equal rights upon all of the terminal tracks owned by this defendant in the City of Omaha, and result in destroying the value to this defendant of the said terminal facilities, and rob this defendant of the revenue that it might otherwise derive from a lawful use of said terminal facilities as contemplated by this defendant in purchasing, acquiring, building and constructing said terminal facilities.

This defendant further shows to the Court that in discharging its obligations to the public as a common carrier, and ow-

ing to the enormous volume of business transacted in the city of Omaha, the terminal facilities now owned and controlled by this defendant in said city, are taxed to their utmost capacity in the performance of said duties and obligations; that to allow the complainant in this case, or the other tenant companies, free ingress and egress to and upon said terminal facilities, as provided by the terms of said decree, and would hinder, delay impede and prevent this defendant from performing and discharging the duties to the public imposed upon this defendant as a common carrier by law.

This defendant further shows to the Court that the main and passing tracks of this defendant between the cities of Omaha and South Omaha, and through said cities, run through a narrow ravine, in many places spanned by viaducts, which said
44 ravine and space for the location of tracks is much of the distance completely filled by railroad tracks already constructed by this defendant and the Chicago, Burlington & Quincy Railway Company; that much of the distance the said tracks are lined with large and expensive buildings, and much of the distance is thickly populated; that by reason of the topography of the country and the said business buildings, residences and other structures, it is impracticable and practically impossible to enlarge the terminal facilities of this defendant for the movement and operation of trains between and through said cities of Omaha and South Omaha.

This defendant further shows to the Court that the right claimed by the complainant to pass directly from the tracks of this defendant on to the tracks of any connecting line in South Omaha, was not contemplated by the Act of Congress of 1871, nor by the contracts with any of the three roads above mentioned nor by this Court in rendering and entering the decree above set forth; that said right was not prayed for in the original Bill filed by the complainant in this case, and that the same is contrary to the custom and usage obtaining between this defendant and the tenant lines using this defendant's main and passing tracks between Council Bluffs, Iowa and South Omaha, Nebraska.

This defendant further shows to the Court that the said complainant, through its attorneys, has many times, in open court, disclaimed any right on the part of said complainant to use the connection with the side and spur track leading from the main line to the lower grade of sidings and spur tracks in Omaha, and to such extensions as may be hereafter made, and disclaimed in open Court any intent to use said connection with
45 the side or spur track, or any connection with any extensions that may be hereafter made, thus admitting that the terms of the decree are broader and confer greater rights and privileges upon the complainant than said

complainant was entitled to under the terms of the Act of Congress of 1871,

And may it please your Honors to grant unto this defendant a writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Mason City & Fort Dodge Railroad Company, commanding it on a certain day and under a certain penalty, in said writ to be inserted, to be and appear before your Honors in this Honorable Court, and then and there full, true and perfect answer make to all and singular the premises, and further to stand to, perform and abide by such further orders, direction and decree therein, as to your Honors shall seem meet and shall be agreeable to equity and good conscience.

Wherefore, this defendant prays that the decree heretofore entered in this case may be modified and reformed in such a manner that those portions of the decree giving the complainant the right to a direct physical connection and direct interchange of cars with other railroads connecting with this defendant in South Omaha, may be stricken out and eliminated; that that portion of the decree giving the complainant the right to "a connection with the side or spur track leading from the main line to the lower grade of the sidings or spur tracks in Omaha, and such extensions as may be hereafter made" may be stricken from said decree, and that this defendant may have such other and further relief in reference to the provisions of said decree as justice and equity may require.

UNION PACIFIC RAILROAD COMPANY,

By John N. Baldwin,
Edson Rich,

Its solicitors.

46 State of Nebraska,
County of Douglas—ss.

The affiant, A. L. Mohler, having been first duly sworn, on his oath, deposes and says that he is the Vice President and General Manager of the defendant in the above entitled cause, Union Pacific Railroad Company, and duly authorized to make this verification; that said defendant is a corporation; that affiant has read the foregoing petition and application for a modification of the decree in the above entitled cause, and knows the contents thereof, and that the statements therein made are true as he verily believes.

A. L. MOHLER.

Subscribed in my presence and sworn to before me this 28th day of June A. D. 1906.

[Seal]

FRANCIS J. MIEDING,
Notary Public.

May 1, 1907.

Endorsed: Filed Jun. 30, 1906. Geo. H. Thummel,
Clerk.

47 Thereupon afterwards, to-wit: On the 2nd. day of
July, 1906, Answer and Showing of A. L. Mohler, et al.
was filed in said case, which said Answer &c. is in words and
figures following, to-wit:

In the Circuit Court of the United States within and for the
District of Nebraska.

Mason City & Fort Dodge Railroad Company, Complainant,
vs.
Union Pacific Railroad Company, et al., Defendants.

Comes now the defendants, Union Pacific Railroad Company; A. L. Mohler, Vice President & General Manager of Union Pacific Railroad Company; J. M. Henry, Yardmaster of said company, and Henry Swagtek, Switch-tender of said company, and in obedience to the Rule or Order issued by this Court on the 21st day of May, 1906, to appear before this Court on a day fixed in said Rule or Order, respectfully state and show to the Court, as reasons why they and each of them should not be adjudged guilty of contempt and punished therefor, as follows:

I.

These defendants respectfully state to the Court that they have each read the answer filed in this proceeding by the Union Pacific Railroad Company and that the allegations thereof with reference to the acts and things done and performed by these defendants on the said 27th day of April, 1906, are true, and that said answer so filed states in detail the reasons for the said acts and things so complained of by the complainant;

48 that said answer is made a part of this showing by way
of reference and these defendants respectfully ask the
Court that the said answer above referred to may be
taken as the separate answer of each and every of these defendants.

II.

These defendants further respectfully show unto the Court that each of the things done and acts performed on the said 27th day of April, 1906, as complained of by the complainant, were done and performed with no thought of violating the injunction and with no intention of disobeying the decree heretofore granted and entered in this case and these defendants deny that the said acts so complained of were in any manner or form a violation of the said injunction or decree.

III.

These defendants further respectfully show unto the Court that all of the acts complained of by the Complainant herein were done and performed by these defendants with no intention of showing any disrespect for the orders or decrees of this Court, heretofore entered.

Wherefore these defendants pray that the said Rule, or Order may be dismissed and that these defendants may be discharged.

A. L. MOHLER,
J. M. HENRY,
HENRY SWAGTEK,

State of Nebraska.

County of Douglas.

A. L. Mohler, J. M. Henry and Henry Swagtek being first each separately duly sworn, on their oaths say, each for himself, that they have read the foregoing answer and showing and the answer of Union Pacific Railroad Company above referred to, and that the statements therein contained are true as they verily believe.

A. L. MOHLER,
J. M. HENRY,
HENRY SWAGTEK,

Subscribed in my presence and sworn to before me by each of the above named parties, this 5th day of June, 1906.

[Seal]

FRANCIS J. MIEDING,
Notary Public.

Endorsed: Filed July 2, 1906. Geo. H. Thummel,
Clerk.

50 Thereupon afterwards, to-wit: On the 2nd day of July 1906, the Answer of Union Pacific R. R. Co. was filed in said case, which said Answer of Union Pacific R. R. Co. is in words and figures following, to-wit:

In the Circuit Court of the United States within and for the District of Nebraska.

Mason City & Fort Dodge Railroad Company, Complainant,
vs.

Union Pacific Railroad Company, Defendant.

Answer of Union Pacific Railroad Company to Petition
of Complainant Filed Herein.

This defendant, Union Pacific Railroad Company, now and

at all times hereafter saving to itself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised is material or necessary for it to make answer to, answering says:

I.

It admits that this Court did enter a decree in the above entitled cause on the 12th day of August, 1903, and which said decree is substantially set forth in the first, second and third paragraphs of the complainant's petition.

II.

Further answering this defendant says that on the 13th day of August, 1903, a writ of injunction was issued out of this Court, under the seal thereof, as set forth in paragraph four of the Complainant's petition.

51

III.

Further this defendant admits that said decree was affirmed by the United States Circuit Court of Appeals in and for the Eighth Circuit, and by the Supreme Court of the United States.

IV.

Further answering this defendant admits the averments contained in the sixth paragraph of the Complainant's petition.

V.

This defendant further answering says that so far as the averments of the seventh paragraph of said complainant's petition are concerned, which relate to the map marked Exhibit A. attached to said petition, that said map substantially shows the freight terminals of the complainant and its connection with the tracks of this defendant, but it denies each and every other allegation in said paragraph seven contained.

VI.

This defendant denies each and every allegation contained and set forth in paragraph eight of said complainant's petition.

VIII.

So far as the averments and allegations contained in the ninth, tenth, eleventh, twelfth, thirteenth, fourteenth and fifteenth paragraphs of said complainants petition are concerned, this defendant says that much of what is therein set forth, is

entirely immaterial to the issues involved in this case, and is merely descriptive of the method of transporting grain and the construction of elevators, the different methods of transferring grain from car to car, the necessity of elevators, etc.

VIII.

This defendant admits that the transportation of grain requires space and facilities; that it must be transferred quickly; that transferring by shovel from car to car is expensive and that transfer by elevator is quicker, better and more expeditious. The defendant admits that Omaha is a large commercial, manufacturing and distributing center and has many lines of railroad centering therein and running through the same and admits that there are large packing houses at South Omaha and that one of the largest live stock markets in the United States, having railroad and banking facilities, is located at said place.

IX.

This defendant says that it has no definite knowledge on the subject, but is informed and believes that the complainant has purchased and now owns the property described in paragraph twelve, thirteen and fourteen of the complaint.

X.

This defendant, while it has no definite knowledge on the subject, is informed and believes that the complainant has caused to be constructed an elevator, as described in paragraph fifteen of the complaint.

XI.

This defendant, for further answer, denies that to accommodate the grain business it is necessary that any railroad desiring to do so should have the right to deliver grain to the said elevators upon the tracks of the complainant. This defendant avers that it is important and necessary that cars loaded with grain, brought by other roads to the City of Omaha should be delivered upon the Complainant's terminals, but this defendant further avers that, under the contracts in said decree referred to, and under the custom now in vogue and in force with respect to the said contracts, and the practice which has obtained for many years, and which has been adopted and carried on by the Chicago, Milwaukee & St. Paul Railway Company the Chicago, Rock Island & Pacific Railway Company, the Chicago & Northwestern Railroad Company, and by other roads having contractual relations with the defendant, loaded cars delivered by other roads in the city of Omaha have been delivered by this defendant, or by this defendant through its authorized agents, to elevators and industrials located in the

city of Omaha at moderate and reasonable charges, and the defendant avers that the same may be done and will be done, and this defendant is willing to see that it shall be done with respect to the terminals owned by this complainant and referred to in paragraph sixteen of the complainant's petition, and this defendant especially denies that grain delivered in such manner could only be so delivered upon excessive intermediate switching charges.

XII.

This defendant further avers that by the decree entered in this cause on the 12th day of August, 1903, reference is made to the contracts between this defendant and the Chicago & Northwestern Railway Company, the Chicago, Milwaukee & St. Paul Railway Company and the Chicago, Rock Island & Pacific Railway Company, the rights of the complainant herein were given and granted "to the same extent and upon the same terms and conditions as stated in the contracts" last above referred to.

54

XIII.

This defendant avers that, by the terms of the Decree and by the terms of the contracts between this defendant and the other railroads last above referred to, the complainant has no right or authority whatever to a direct interchange of business between the said complainant and the tracks of any other company connecting with the tracks of this defendant; that is to say that all interchange of cars from any of the tenant companies of this defendant with the complainant must be made by this defendant or through the authorized agents of this defendant, and that none of the tenant companies of the defendant, or companies having contractual relations with the defendant, have the right or authority, either under the decree or under any of the said contracts, to deliver cars direct to the complainant but the delivery must be made through this defendant or its authorized agents.

XIV.

This defendant further avers that ever since the execution of the contract with the Chicago, Rock Island & Pacific Railway Company of May 1st, 1890, and the contracts with the Chicago & Northwestern Railway Company and the Chicago, Milwaukee & St. Paul Railway Company in 1898, and subsequent thereto, covering the period to the present date, it has been the custom and practice for the said Chicago, Rock Island & Pacific Railway Company, the Chicago, Milwaukee & St. Paul Railway Company and the Chicago & Northwestern Railway Company, and all other companies having contractual relations with this defendant, when any or all of said companies

or roads had cars or freight for delivery from one of said roads to another, or from one of said roads to any industrial, team track, side track or freight house off of the line of the tenant road, that said delivery and exchange should be made
55 by this defendant or its authorized agents, and no exchange of cars or freight has ever taken place or been permitted between the contracting roads and other roads, or from the contracting or tenant roads to any side tracks, industrials, warehouses, or other places of delivery located off the lines of the tenant roads, except through this defendant or its authorized agents.

XV. .

The defendant further avers that for the purpose of making these deliveries it has provided tracks at Council Bluffs in the state of Iowa, at 6th street, 10th street and 20th street in the city of Omaha and near the stock yards in the city of South Omaha in the state of Nebraska and that during all of these years all of said roads recognizing that this was the method of exchange and interchange authorized by the contracts, have followed the said custom and practice and adopted the same as the proper expression of the rights of all the parties to the contracts.

That by the reason of the said practice and custom the complainant is bound thereby and no other method of exchange or delivery is authorized either by the Decree or the contracts, or by the custom or practice last above referred to.

XVI.

This defendant, further answering, avers that after the decree was entered in this case the complainant had no other or greater rights in the use of the privileges and facilities referred to in the decree than any of the other roads, and it also has followed the same practice and custom the same as other
56 roads and in accordance with the arrangement, understanding and practice last above referred to and has adopted the same.

XVII.

This defendant, further answering, says that the averments contained in paragraph seventeen and eighteen of the complainant's petition are practically correct.

XVIII.

This defendant denies the averments set forth in paragraph nineteen of the complainant's petition and especially denies that it, or any of its officers, agents or servants, interfered with or prevented the free use by the complainant and its

lessee of its terminals and of the track referred to in said decree or any connection.

XIX.

This defendant further answering, admits that there are various railroads connecting with the tracks of Union Pacific Railroad Company at or near South Omaha and Council Bluffs, as set forth in paragraph 20 of the complainant's petition and that certain of the tracks, under certain conditions, are used by the said railroads under the contracts referred to in the record in this case.

XX.

This defendant further answering, admits that the Chicago, Rock Island & Pacific Railway Company owns a line of railroad extending from Chicago to Council Bluffs and from South Omaha to Denver and other places and that the said Company is a large grain carrier to Omaha. This defendant further admits that the tracks of the said Rock Island road connect with the tracks of the Union Pacific at Council Bluffs and also
57 a short distance west of the depot of Union Pacific Railroad Company at South Omaha, as shown upon the maps and by the evidence in this case and this defendant also admits that the only connection between the Eastern and the Western systems of the said Rock Island Company is the tracks of the said Union Pacific Railroad Company from its eastern terminus to the said last mentioned point in South Omaha, and this defendant admits that the said Rock Island Company has a right, under its contract with the Union Pacific Railroad Company, to a use of the main and passing tracks of this defendant from Council Bluffs to the point of connection just west of the Union Pacific's depot at South Omaha; but this defendant denies that the said Rock Island Company has a right to the use of all connections of other companies with the tracks of the Union Pacific Railroad Company.

XXI.

While this defendant has no definite knowledge, it is informed and believes that the Rock Island Company operates its two systems as a continuous line, running its trains, both passenger and freight, both easterly and westerly over its systems, using as part thereof the main and passing tracks of the Union Pacific between its terminus in Council Bluffs and the connection a short distance west of the depot of the Union Pacific in South Omaha.

XXII.

This defendant, further answering, admits the allegations as set forth in paragraph 22 of the complainant's petition.

XXIII.

This defendant, further answering, denies that on the 27th day of April, 1906, this defendant, through its officers and agents, A. L. Mohler, General Manager, J. M. Henry, Yardmaster, and Henry Swagtek, Switch Tender or through
58 any other agents or employes of said company interfered with the full, equal and joint use of the said main and passing tracks covered by the said decree, or in any manner interfered with any right granted the complainant, or its lessee, under and by virtue of the terms of the said decree or any of the contracts with tenant roads in said decree referred to.

This defendant, for further answer to paragraphs twenty-four, twenty-five and twenty-six of the complainant's petition, wherein is set forth the claim that this defendant through its agents, servants and employes, and particularly through its General Manager, A. L. Mohler, its Yardmaster, J. M. Henry, and its Switch Tender, Henry Swagtek, refused to allow the complainant, or its lessee, the full and joint use, occupation and right to the premises covered by the decree entered in this case on the 12th day of August, 1903, and that the last named representatives of the defendant violated the injunction embodied in the said decree, by such act and refusal, avers that the complainant has not [property] or correctly set forth the facts and circumstances connected with the refusal on the part of the defendant to permit the complainant, or its lessee, to use certain of the tracks and facilities in question and for further answer to the said paragraphs this defendant avers that the true facts and circumstances connected with the said transaction are as follows:

That the said complainant, or its lessee, attempted on the 27th day of April, 1906, to pass from the tracks of the Union Pacific Railroad Company directly onto and over the tracks of the Chicago, Rock Island & Pacific Railway Company's road at South Omaha, through and over a connection between
59 the Rock Island and Union Pacific Railroad Companies tracks, which had heretofore been made and constructed, under the terms of the contract between the Rock Island and Union Pacific Companies, for the exclusive use of the Rock Island Company in the operation of its trains. The defendant further avers that at this time and on the occasion referred to the complainant was endeavoring to take one of its own cars from the tracks of this defendant to the tracks of the Chicago, Rock Island & Pacific Railway Company for the purpose of making delivery of the said car on the said tracks; all in violation of the said contracts and decree hereinbefore referred to and in direct violation of the custom and practice hereinbefore set forth.

XXIV.

This defendant, further answering, denies that at that time, or at any other time, it refused to allow the complainant, or its lessee, the right to use any of the tracks or facilities which it was entitled to use under the said decree or the contracts referred to in this answer. This defendant alleges that the complainant, at the time and upon the occasion referred to, was endeavoring to use tracks and facilities to the use of which it was not entitled, either under the said decree or any of the contracts referred to, and as this was in violation of the terms of the contracts and of the decree and in violation of the custom and practice referred to, this defendant refused to permit the complainant to take the car in question from the main tracks of this defendant to the tracks of the Chicago, Rock Island & Pacific Railway Company at South Omaha, Nebraska.

XXV.

This defendant, for further answer, avers that if the complainant is entitled, and it should be so decreed, to exchange cars and freight directly with other roads, as is
60 contended for by the complainant in this proceeding, that then and in that event all other lines and all other railroad companies having contractual relations with this defendant, and railroad companies which are entitled to the same uses, rights and privileges to which the complainant is entitled, under the decree, could and would respectively assert their right to the same uses and privileges as enjoyed by the complainant; so far as the direct interchange of cars and traffic is concerned and this defendant avers that the right of each road having contractual relations with this defendant to make direct exchange of its cars and freight would result in a congestion of traffic on the two main lines of the defendant between Council Bluffs and South Omaha, for the reason that to make the exchanges as demanded by the complainant would necessitate the engines, crews and cars of each of the said roads using the main and passing tracks of the defendant at all hours of the day and night and particularly at times when the defendant was moving its passenger trains over the said tracks, and would result in such a congestion of the said tracks that this defendant would be unable to discharge its duties to the Government and to the public in general as a common carrier and a carrier of the United States mails.

XXVI.

This defendant further answering, denies all and all manner of unlawful combination and confederacy, wherewith it is by the said bill charged without this, that there is neither matter, cause nor thing in the said complainant's bill of complaint con-

tained material or necessary for this defendant to make answer unto, not herein well and sufficiently answered, 61 confessed, traversed, avoided or denied, is true to the knowledge and belief of this defendant, all of which matters and things this defendant, is willing to maintain, aver and prove as this Honorable Court may direct and humbly prays to be hence dismissed with its reasonable charges in this behalf most wrongfully sustained.

UNION PACIFIC RAILROAD COMPANY,
By John N. Baldwin, E. Rich,
Its attys.

State of Nebraska,
County of Douglas—ss.

A. L. Mohler, makes solemn oath and says that he is the Vice-President and General Manager of the above named defendant, a corporation; that this affiant has read the foregoing answer, subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

A. L. MOHLER.

Subscribed in my presence and sworn to before me this 5th day of June, 1906.

[Seal]

FRANCIS J. MIEDING,
Notary Public.

May 1, 1907.

Endorsed: Filed July 2, 1906. Geo. H. Thummel,
Clerk.

§2 Thereupon afterwards, to-wit: On the 30th day of June, 1906, Chancery Subpoena was duly issued in said case and returned and filed on the 6th day of July, 1906, which said Chancery Subpoena is in words and figures following, to-wit:

(Original)

United States of America,
District of Nebraska.

The President of the United States of America; To Mason City & Fort Dodge Railroad Company—Greeting:

You are hereby commanded to be and appear at Rules, to be held at the office of the Clerk of the Circuit Court of the United States for the District of Nebraska, on the first Monday of August next, at the City of Omaha, then and there to answer the Petition and Application of Union Pacific Railroad Com-

pany for a modification of the Decree filed herein, this day filed against you, hence fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 30th day of June, 1906.

Issued at my office in the city of Omaha, under the Seal of said Circuit Court, the day and year last aforesaid.

[Seal]

GEO. H. THUMMEL, Clerk.

Memorandum: The above named Mason City & Fort Dodge Railroad Company to enter its appearance in this suit in the Clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken pro confesso.

GEO. H. THUMMEL, Clerk.

John N. Baldwin, Edson Rich,
Solicitors for Union Pacific Railroad Co.

63 Attached to said Subpoena is the Return of the Marshal, which said Return is in words and figures following, to-wit:

United States Marshal's Office,
District of Nebraska.

I hereby certify and return, that I received the within writ on the 2nd day of July, 1906, and personally served the same on the 2nd. day of July, 1906, on "Mason City & Fort Dodge Railroad Company" at Omaha by delivering to and leaving with Henry H. Churchill General Agent Chicago and Great Western R. R., he being the highest officer found in my District, County of Douglas, in said District, an attested copy thereof.

WM. P. WARNER,

U. S. Marshal.

By John O. Moore, Deputy.

Marshal's Costs.

Service,	2.00
Mileage,	
Expense, (in lieu of mileage)	

Total,	\$2.00
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Endorsed: Filed Jul 6 1906 Geo. H. Thummel,
Clerk.

64 Thereupon afterwards, to-wit: On the 21st day of December, 1906, the Complainant's Answer to Defendant's Petition and Application was filed in said case, which

said Complainant's Answer to Defendants Petition and Application is in words and figures following, to-wit:

Circuit Court of the United States, District of Nebraska.

Mason City & Fort Dodge Railroad Company, Complainant,
vs.

Union Pacific Railroad Company, Defendant.

Answer.

Now comes the Mason City & Fort Dodge Railroad Company the complainant in the above entitled action, and for answer to the petition of the Union Pacific Railroad Company for a modification of the original decree entered herein states as follows, to-wit:

Complainant admits that on the 12th day of August, 1903 the court made and entered its decree in said cause in the words and figures stated in the petition herein; and that thereafter and on the 13th day of August, 1903, a writ of injunction was issued out of the court, directed to the Union Pacific Railroad Company, its officers, agents, attorneys and employes, and served upon the said Union Pacific Railroad Company, a copy of the said injunction being set forth in the petition. That the said decree was affirmed by the Circuit Court of Appeals

for the Eighth Circuit, and by the Supreme Court of the
65 United States, and that the mandate from the last named court has been duly filed in the office of the clerk of said court, and that a copy thereof is hereto attached and made a part of this answer marked "Exhibit A."

The complainant denies that the terms and conditions of said decree and of the writ of injunction, with reference to the rights and privileges accorded to the complainant in this case, are broader and more comprehensive than contemplated by the Bridge Act of 1871, or of any of the contracts between the Union Pacific Railroad Company and the Chicago and Northwestern Railway Company, the Chicago, Milwaukee and St. Paul Railway Company and the Chicago, Rock Island and Pacific Railway Company.

Complainant denies that in the pleadings, decrees and briefs of all the parties to the cause, during the course of the cause through the various courts from the Circuit Court of the United States, to the Supreme Court of the United States, it was contended by the said complainant that it should be accorded only such rights and privileges as were fairly within the terms of the Bridge Act and on a par with the rights and privileges granted the railroads last above named by the terms of the contracts between said roads and the defendant herein; and denies that it was the understanding of the court to limit the complainant to the terms of any of the

contracts with the other companies, and alleges that the positions taken by the complainant are completely and fully stated in the complaint, the evidence and the briefs on file in said cause, and that all of said questions were fully and completely passed upon by the Circuit Court, the Circuit Court of Appeals and the Supreme Court of the United States and are res judicata.

66 Complainant denies that the decree and writ of injunction grants to the complainant greater rights than were intended by the court in entering the decree, or greater rights than the complainant is entitled to under the said Act of 1871, or any greater rights than the other railway companies have under said contracts; reference to which records, decrees and proceedings are hereby made for greater certainty.

Complainant denies that the other railroad companies have not a right to connect with other roads connecting with the Union Pacific Railroad at South Omaha, and alleges the fact to be that they have such rights, both under the Act of Congress of 1871 and under their said contracts.

Complainant admits that by the terms of the decree the complainant is entitled to be admitted into the full, equal and joint use of the main and passing tracks of the defendant, now located and established or which may hereafter be located and established, from the eastern terminus of said tracks in Council Bluffs, in the State of Iowa, to a connection with the Union Stock Yards railroad and the other railroads connecting with the defendant at South Omaha, in the State of Nebraska including the bridge, as more particularly appears by a reference to the decree, to which this complainant refers the court.

And the complainant denies that said decree is in excess of the rights contemplated by said Act of Congress of 1871, or is in excess of the rights and privileges guaranteed to the complainant by the terms of said Act, and alleges, further that all said questions raised by the petition herein were fully and fairly argued, submitted and adjudicated in said cause.

67 Complainant admits that said decree gave to the Complainant a right to a connection "with the side or spur track leading from the main line to the lower grade of the sidings and spur tracks in Omaha, and such extensions as may be hereafter made;" and the complainant denies that the said right gives to it the right to enter upon any portion of the yards, team tracks or terminal tracks of the defendant located in the city of Omaha, or that the said right so granted is contrary to the terms or spirit of the Act of Congress of 1871, and denies that the said right gives the complainant any rights upon all terminal tracks owned by the

defendant in the city of Omaha, or that it results in destroying the value to the defendant of the said terminal facilities, or robs the defendant of the revenue which it might otherwise derive from the lawful use of said terminal facilities as contemplated by the defendant in purchasing, acquiring, building and constructing said terminal facilities.

Complainant denies that the terminal facilities now owned and controlled by the defendant in the city of Omaha are taxed to their utmost capacity in the performance of the duties and obligations of the defendant, and denies that to allow the complainant, or any other tenant company, free ingress and egress to and upon said terminal facilities, as provided by the terms of said decree, would hinder, delay, impede and prevent the defendant from performing and discharging the duties to the public imposed upon it as a common carrier by law, and alleges that that was one of the issues involved in said cause and passed upon by the court and is res judicata.

Complainant admits that the main and passing tracks of this defendant between the cities of Omaha and South Omaha, and through said cities, run a part of the way through a narrow ravine, and in several places are spanned by viaducts, which ravine and space for the location of tracks is taken up by the right of way and tracks of the Union Pacific Railroad Company and the Chicago, Burlington & Quincy Railroad Company; that much of the distance the tracks are lined with large and expensive buildings, and much of the distance is thickly populated; but complainant denies that it is impracticable or practically impossible for the defendant to enlarge its terminal facilities for the movement and operation of trains between and through the said cities of Omaha and South Omaha, and alleges the fact to be that it has room on its right of way for the construction of many more tracks and for a substantial enlargement of its terminal facilities.

Complainant denies that the right claimed by the complainant to pass directly over the tracks of the defendant onto the tracks of any connecting line, was not contemplated by the Act of Congress 1871, but alleges that the same was contemplated and provided for by said act as held and adjudicated by the court in this cause, and that that was one of the original questions involved in the case and was settled by the final decree therein.

Complainant alleges that the said right is granted by the contracts to the other three railroads, above mentioned; that the said right was prayed for in the bill of complaint herein, was one of the contentions of the complainant all through said cause, and was finally passed upon by the decree herein.

Complainant denies that the same is contrary to the custom and usage between the defendant and the tenant lines using

the defendant's main and passing tracks between Council Bluffs, Iowa, and South Omaha, Nebraska, and alleges the fact to be that said tenant lines all universally exercise said right and pass over said main and passing tracks onto connecting lines both at South Omaha and at Council Bluffs.

69 Complainant denies that it has, through its attorneys at any time in open court or in any other place, disclaimed any right on its part to the use of the connections with the said spur tracks leading from the main line to the lower grade of sidings and spur tracks in Omaha and to such extensions as may be hereafter made, and that it has disclaimed in open court or in any other place any intent to use said connection; and denies that it has admitted that the terms of the decree are broader than the complainant is entitled to under said Act of Congress.

For further answer to said petition, complainant alleges that all of said issues were involved in the said case in the United States Circuit Court, and before the Circuit Court of Appeals upon appeal, and in the Supreme Court of the United States; and that, said decree of the Circuit Court having been affirmed and the mandate filed in this court, this court is without jurisdiction to modify or change in any respect the said decree; that all of said questions are res judicata; and the complainant refers to each and every of the records and proceedings in said cause, and the testimony therein, for greater certainty, in order to determine said issues and the effect of said final decree.

Complainant therefore prays that the said petition of the defendant be dismissed.

MASON CITY AND FORT DODGE RY.

By A. B. Stickney, President.

FRANK B. KELLOGG,

W. D. McHUGH,

Complainants Solicitors.

70

Exhibit A.

Supreme Court of the United States,
No. 18. October Term, 1905.

Union Pacific Railroad Company, Appellant,
vs.

Mason City and Fort Dodge Railroad Company.

Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.

This cause came on to be heard on the transcript of the record from the United States Circuit Court of Appeals, for the Eighth Circuit, and was argued by counsel.

On consideration whereof, it is now here ordered adjudged and decreed by this court that the decree of the said United States Circuit Court of Appeals in this cause be and the same is hereby affirmed with costs; and that this cause be, and the same is hereby, remanded to the Circuit Court of the United States for the District of Nebraska.

November 6, 1905.

71 State of Minnesota,
County of Ramsey.

A. B. Stickney came before me personally, and being duly sworn, doth say that he is the president of the Mason City and Fort Dodge Railroad Company, Complainant, in the above entitled action; that the foregoing is true of his own knowledge except as to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

A. B. STICKNEY.

Subscribed and sworn to before me on this 26th day of November, A. D. 1906.

[Notarial Seal]

[Seal]

GUY CHASE,
Notary Public, Ramsey County, Minn.

My commission expires August 1, 1901.

Endorsed: Filed Dec. 21, 1906, Geo. H. Thummel, Clerk.

72 Thereupon afterwards, to-wit: On the 21st day of December, 1906, Disclaimer was filed in said case, which said Disclaimer is in words and figures following, to-wit:

In the Circuit Court of the United States, within and for the District of Nebraska.

Mason City and Fort Dodge Railroad Company, Complainant,
vs.

Union Pacific Railroad Company, Defendant.

Now comes the Mason City and Fort Dodge Railroad Company and states to the Court:

That this Court did, on the 12th day of August 1903, render and enter a final decree in the above-entitled action, against the Union Pacific Railroad Company, granting the complainant the full, equal and joint use of certain tracks, depot and facilities of the Union Pacific Railroad Company situated in Council Bluffs, Iowa, and Omaha and South Omaha, Nebraska, as appears more particularly by said decree, reference to which is hereby made for greater certainty;

That a writ of injunction was duly issued out of this court and served upon the Union Pacific Railroad Company on the

13th day of August, 1903, enforcing the said decree—to which reference is hereby made for greater certainty;

That the Union Pacific Railroad Company appealed said action to the Circuit Court of Appeals of the United States in and for the Eighth Circuit, which said decree was, by the opinion and judgment of said Court of Appeals duly affirmed;

That the said Union Pacific Railroad Company appealed said cause to the Supreme Court of the United States, and said decree was by said court duly affirmed, and the mandate of said court duly issued and filed in the office of the Clerk of the United States Circuit Court for the District of Nebraska, at Omaha, Nebraska, which said mandate affirmed said decree in all particulars;

That in and by the opinion of said Supreme Court of the United States it was among other things said;

"It is contended that the terms of the decree are too broad, that they give to the Mason City Company not merely the use of the bridge and its approaches, including therein connections with the western roads terminating at Omaha, but also the use of all side or spur tracks connecting the Union Pacific Railroad with private industries, and the track extending northward from the main line of the Union Pacific to the old ferry crossing. On the argument counsel for the appellee stated that his company made no claim to a right to use these tracks. If the language of the decree is open to this misconception, it should be corrected, and the Circuit Court may make such correction on proper application.

Decree affirmed."

That it has never been claimed by the Mason City and Fort Dodge Railroad Company that under said decree it had the right to use the side or spur tracks connecting the Union Pacific Railroad with private industries and the track extending northward from the main line of the Union Pacific railroad to the old ferry crossing;

And in order that there may be no misconception as to the meaning of said decree, it is agreed that it was not the intent and purpose or meaning of the decree, and the decree cannot be construed to permit the complainant to the use of the side or spur tracks of the Union Pacific railroad which connect with private industries or the said track extending northward from the main line of the Union Pacific railroad to the old ferry crossing.

MASON CITY AND FORT DODGE RAILROAD COMPANY

By A. B. Stickney, President.

FRANK B. KELLOGG,

W. D. McHUGH,

Complainants Solicitors.

Endorsed: Filed Dec. 21 1906. Geo. H. Thummel,
Clerk.

75 Thereupon afterwards, to-wit: On the 21st day of December, 1906, a replication to the answer of Mason City & Ft. Dodge Railroad Co. to the petition of Union Pacific Railroad Company for a Modification of Decree, was filed in said case, which said replication to the answer of Mason City & Ft. Dodge Railroad Co. to the petition of Union Pacific Railroad Company for a modification of decree, is in words and figures following, to-wit:

In the Circuit Court of the United States within and for the District of Nebraska.

Mason City & Ft. Dodge Railroad Company, Complainant.

vs.

Union Pacific Railroad Company, Defendant.

Replication to the Answer of Mason City & Ft. Dodge Railroad Company to the Petition of Union Pacific Railroad Company for a Modification of Decree.

This replicant, saving and reserving to itself all and all manner of advantage of exceptions which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said complainant to the petition of the defendant for a modification of decree, for replication thereunto says that it does and will ever maintain and prove its said bill to be true, certain and sufficient, in the law to be answered unto by said complainant, and that the answer of the said complainant is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed, or denied is true; all which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly as in and by its said bill it has already prayed.

76 replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly as in and by its said bill it has already prayed.

JOHN N. BALDWIN,
EDSON RICH,
Solicitors for Defendant.

Endorsed: Filed Dec. 21, 1906. Geo. H. Thummel,
Clerk.

77 Thereupon afterwards, to-wit: On the 6th day of July, 1906, testimony of witnesses, in the matter of the application of the complainant to punish the defendant for disobeying the decree and writ of injunction was filed in said

case, which said testimony is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

The Mason City and Fort Dodge Railroad Company, Complainant,

vs.

The Union Pacific Railroad Company, Defendant.

In Equity. Docket "V." No. 55.

Examination of witnesses beginning on the 6th day of June, 1906, at the hour of ten o'clock A. M., at the rooms of the Law Department of the Union Pacific Railway Company, at their Headquarters Building, in the City of Omaha, Douglas County, Nebraska, and within said District of Nebraska, before me May H. Finley, an Examiner in Chancery for the District of Nebraska, on behalf of the parties hereto, in the matter of the application of the complainant to punish the defendant for disobeying the decree and writ of injunction herein, pursuant to the annexed stipulations, and with adjournments from time to time as hereinafter noted.

Appearances: Mr. W. D. McHugh, and Mr. Frank B. Kellogg, attorneys for the Mason City and Fort Dodge Railroad Company.

Mr. Edson Rich, attorney for the Union Pacific Railroad Company.

78 By Mr. Rich: It is stipulated and agreed that the map marked Exhibit 1 shows in a substantially correct manner the Union Pacific Railroad tracks and terminals and the tracks of other railroads and connections in Council Bluffs, Omaha and South Omaha as more particularly designated on the map and that the same may be considered in evidence and attached to the report of the examiner.

By Mr. Kellogg: The testimony is objected to as incompetent, irrelevant and immaterial and it is agreed that all testimony may be taken subject to the objections without renewing it as to each question.

79 David T. Crawford, being first duly examined, cautioned and solemnly sworn testified as follows:

Examined by Mr. Rich:

Q. State your name and residence?

A. David T. Crawford, 916 Dorcas Street, Omaha.

Q. If you hold a position at the present time with the Union

Pacific Railroad Company, you may state what it is?

A. General Yard Master of terminals, bridge district.

Q. How long have you held that position?

A. Nine months.

Q. You may state what territory your jurisdiction embraces?

A. Council Bluffs to Gilmore.

Q. Gilmore in on the Union Pacific about six miles west of South Omaha? A. About that, yes sir.

Q. State in a general way what your duties are?

A. I have a general supervision of everything within the defined limits in the way of handling cars and the handling of our trains over this territory.

Q. Do you include passenger trains as well as freight trains?

A. Yes sir.

Q. The Union Station in Omaha on the Union Pacific road is within the territory subject to your jurisdiction, is it not? A. Yes sir.

Q. You may state how many passenger trains the Union Pacific operates west over its lines from Council Bluffs to a point a mile and a half west of the passenger station in South Omaha each twenty-four hours, giving the time of the arrival and departure of those trains from the Union Station?

80 By Mr. Kellogg: Specially objected to as immaterial.

A. We have eight passenger trains west bound and eight east.

Q. Give the numbers and the descriptions of those trains?

A. Beginning with train number 11, Colorado Special arrives at Omaha with engine and mail car at 7:30 A. M., getting connections from the Milwaukee and Northwestern and departs at 7:45 A. M.

Q. What do you mean by connections from the Milwaukee and Northwestern?

A. They bring in cars that go through in this train.

Q. What cars does number 11 receive from the Milwaukee, sleepers or day coaches, mail, or what?

A. One day coach and sleeper, I believe it is.

Q. What cars does number 11 receive from the Northwestern?

A. They get a sleeper and day coach and I think a composite car.

Q. Is number 11 scheduled to stop between the Union Station in Omaha going west, and Gilmore? A. It is not.

Q. What is the next passenger train that leaves for the West? A. Train number 13.

Q. What is that train?

A. That is the North Platte local.

Q. Is that train made up in the yard at Omaha or does it come from Council Bluffs?

A. Council Bluffs, leaving there at 7:25 A. M., arriving at Omaha at 7:40 and leaving at 8:10 A. M.

Q. Is that train scheduled to stop between Omaha and Gilmore?

A. Scheduled to stop at South Omaha, flagged at
81 Avery?

By Mr. Kellógg:

Q. Stops on a flag at Avery? A. Yes sir.

By Mr. Stickney:

Q. That is south of the Rock Island crossing? A. Yes sir.

By Mr. Rich:

Q. What is the next train?

A. The next train is train number 1 which arrives at Omaha at 9:15 A. M., and departs at 9:40, called the Overland Limited.

Q. Is that train made up in Omaha or Council Bluffs, if either?

A. The engine comes from Council Bluffs and the train is taken out of Northwestern number 1.

Q. Is that train scheduled to stop between Council Bluffs and Gilmore? A. It is not.

Q. How many cars does number 1 ordinarily carry?

A. Seven.

Q. What is the next train?

A. Number 7 which arrives at Omaha at 11:15, departs at 11:30; the engine for number 7 comes from Council Bluffs and our number 7 west is the train that goes through coming from the Northwest.

Q. How many cars does number 7 carry? A. Six cars.

Q. What is the next passenger train leaving Omaha for the West? A. Number 9 fast mail.

Q. Is that made up at Council Bluffs or Omaha?

A. Made up at Council Bluffs, consisting of seven
82 mail cars leaving Council Bluffs at 1:40 Omaha 1:55.

Q. Does that train carry any passenger coaches?

A. No sir.

Q. But carries seven mail cars? A. Yes sir.

Q. Is that train scheduled to stop between Omaha and Gilmore? A. Stops at South Omaha.

Q. What is the schedule time of that train, if you know?

A. I am sure I don't know.

Q. What is the next train? A. Train number 21.

Q. What is 21? A. Beatrice and Stromsburg local.

Q. Is that made up in Omaha or Council Bluffs?

A. Council Bluffs, leaving there at 2:45, Omaha 3 o'clock and departs at 3:15.

Q. How many parts does that train carry?

A. Three usually.

Q. Is it scheduled to stop between Omaha and Gilmore?

A. Stops at South Omaha and flag at Avery.

Q. What is the next train?

A. Number 3 Colorado and California Express which is due to leave Council Bluffs at 3:20 arriving at Omaha at 3:35 and leaving at 4:15.

Q. How many cars does that train carry?

A. About 10 or 11.

Q. Is it scheduled to stop between Omaha and Gilmore?

A. Stops at South Omaha.

Q. What is the next train?

83 A. Train number 5 California and Ogden Express, leaves Council Bluffs 3:25 arrive at Omaha 3:40 depart at 4:25.

Q. How many cars does that train carry?

A. 10 or 11.

Q. Is it scheduled to stop between Omaha and Gilmore?

A. Stops at South Omaha.

Q. What is the next train?

A. That is all until the next morning.

Q. You may now give the time of the arrival and departure from the Union Station of the Union Pacific passenger trains from the west?

By Mr. Stickney: Q. What do you mean by departure, they arrive here do they not?

By Mr. Rich: Q. Well, their departure for Council Bluffs.

A. Number 12 arrives at Omaha at 7:44 A.M., leaving at 8 o'clock for Council Bluffs.

Q. Let me ask you in a general way whether the passenger trains from the west carry about the same number of cars each as the passenger trains from the east to the west?

A. Yes sir, they do.

Q. What is the next train to arrive in Omaha from the west?

A. No. 4 arrives at 9:30, leaves 9:50 for Council Bluffs.

Q. The next train?

A. Number 22 Beatrice and Stromsburg local arrives 1:50 and departs at 2 o'clock for Council Bluffs.

Q. Are number 12 and number 4 scheduled to stop between Gilmore and Omaha?

A. Number 4 stops at South Omaha, flag at Avery; Number 12 does not stop.

84 Q. What is the next train?

A. Number 10, arrives at Omaha at 3:30 and departs at 3:40.

Q. The next train?

A. Number 14, North Platte, arrives 4:50, departs at 5:10.

Q. Does the North Platte local stop between Gilmore and Omaha?

A. Stops at South Omaha and flag at Avery.

Q. What is the next train?

A. Number 6; arrives 5:10 and departs 5:50.

Q. Does number 6 stop between Omaha and Gilmore?

A. Stops at South Omaha.

Q. The next train?

A. No. 2; arrives at 8:18 P.M., and departs at 8:38.

Q. Is No. 2 scheduled to stop between Gilmore and the Union Station at Omaha?

A. No sir. No. 8. arrives at 10:45 P.M., and departs at 11 P. M.

Q. What is No. 8?

A. The Los Angeles Limited.

Q. Is that train scheduled to stop between Gilmore and the Union Station in Omaha? A. It is not.

Q. What is the next passenger train?

A. No. 12 the next morning. That is all of them.

Q. You may now enumerate in their order as to time the movement of freight trains west over the Union Pacific from Council Bluffs or Omaha.

By Mr. Kellogg: Doesn't the time table state all this?

By Mr. Rich: Yes, but I want to get in some other facts.

85 A. No. 51 leaves Council Bluffs 4 A.M., that is the Colorado fast freight train.

Q. Is that train scheduled to stop between Council Bluffs and Gilmore? A. No sir.

Q. What is the next?

A. No. 57 local freight; arrives at Omaha at 6:40 A.M.; stops South Omaha and Avery. No. 53 leaves Council Bluffs at 7:50 A.M., doesn't stop between Council Bluffs and Gilmore. No. 55 is due to leave Council Bluffs at 6:30 P. M., and 55 also leaves Omaha at 8 P.M.

Q. Is that scheduled to stop between Omaha and Gilmore?

A. It is not, no sir. That is all of our regular freight trains.

Q. You may give to the reporter the movements of the freight trains from the west to the east including stops, if any, between Gilmore and Council Bluffs?

A. No. 52 arrives at Gilmore 4:30 A. M., stops at South Omaha and arriving time at Omaha is 6:20 A.M., No. 56 arrives at Gilmore at 4:50 A.M., Omaha at 6:30, and stops at South Omaha. No. 58 arrives at Gilmore at 3:30, Omaha 4:35, stops at Avery and South Omaha. That is all the east bound freight trains scheduled.

By Mr. Rich: It is stipulated and agreed that the employees' time table effective June 3, 1906, identified as Exhibit 2, showing the movement of trains of the bridge district between Council Bluffs and Gilmore may be admitted for 86 the purpose of showing the movements of all trains as appear on Exhibit 2.

Q. You may state whether or not there are other trains moved over the Union Pacific tracks between Council Bluffs and Gilmore or any part of the line between those points not shown on the time table, Exhibit 2?

A. A great many extra trains over all the lines shown.

Q. They do not show on this time card?

A. They do not show on this time card.

Q. Are there any trains, either passenger or freight, moved by any road over what is denominated the bridge district not shown on Exhibit 2?

A. There are a great many.

Q. Are there any other trains that move at regular times or move each day over the bridge district not shown on Exhibit 2.

A. There are, yes sir.

Q. What are those trains?

A. The Milwaukee has a usual hour for going west in the forenoon, east shortly after noon, out of South Omaha with their meat or stock runs. They go west again in the afternoon and in the evening with meat or stock runs, all lines are about the same as this one.

Q. And these movements of the Milwaukee that you have just described are not shown on the time card Exhibit 2?

A. No sir.

Q. How many trains does the Milwaukee operate daily on an average in each direction or in both directions between South Omaha and Council Bluffs not shown on time card Exhibit 2?

A. I would have to give you that as a mere guess.

87 Q. Well, is there an average?

By Mr. Stickney: You have just said that they run two each way.

A. Well, that two is what they take care of the regular business out of South Omaha for Council Bluffs with. They have other extra runs.

Q. For what purpose?

A. Hauling the stuff from South Omaha to Council Bluffs or from Council Bluffs to South Omaha, or in connection with the Union Pacific at Omaha?

By Mr. Rich: Does the Milwaukee have any daily runs east or west between Council Bluffs and South Omaha not shown on the time card Exhibit 2?

A. They have several runs that they make which we term as daily.

Q. Moving freight between those points? A. Yes sir.

Q. Does the Milwaukee take out daily through South Omaha a train of packing house products?

A. I cannot say as to whether they take it daily or not, but it is almost daily at least.

Q. Now is the train that moves that packing house product shown on the time card Exhibit 2? A. It is not.

Q. What other trains does the Milwaukee have out of South Omaha east?

A. They get possibly one or two trains in the evening.

Q. You say possibly?

88 A. They get one, and possibly two or three, they get one each day.

Q. That is, one each day out of there and sometimes two or three?

A. Yes sir, according to the business they are doing.

Q. What are the facts with reference to trains that Milwaukee moves from Council Bluffs west from South Omaha daily that do not show upon the time card Exhibit 2?

A. The same number of trains go west that go east.

Q. Does the Northwestern move any trains east or west between Council Bluffs and South Omaha that do not show upon time card Exhibit 2? A. Yes sir.

Q. What are they and how many?

A. They will run about the same as the Milwaukee.

Q. Does the time card in evidence show the movement of the regular Rock Island trains over the bridge district, or such part of it as it uses? A. Yes sir.

Q. Does the Rock Island move any trains between Council Bluffs and South Omaha either east or west daily that do not show upon the time card in evidence? A. Yes sir.

Q. How many?

A. Why, I rather think about the same as the Milwaukee or Northwestern.

Q. From one to three trains? A. Yes sir.

Q. Are these trains moved by the three roads you have just described moved at any particular time in the day?

89 A. They are all irregular with the exception of when they have meat or meat runs they go out about 12:30 to 12:40 east around out of South Omaha, P. M.

Q. And the movement of the other trains that you have described not appearing on the time card are irregular and at various times throughout the twenty-four hours or throughout the day, which?

A. Throughout the day or the twenty-four hours either.

Q. Does the time card now in evidence show the operation of Illinois Central trains over any part of the main line of the Union Pacific? A. Yes.

Q. And does it show the operation of Missouri Pacific trains? A. Yes sir.

Q. Of Wabash trains? A. Yes sir.

Q. Does the Missouri Pacific operate any trains between Omaha and South Omaha or Council Bluffs and South Omaha daily, not shown upon the time card in evidence? A. No sir.

Q. Does the Chicago & Great Western operate any trains between Omaha and South Omaha or Council Bluffs and South Omaha not shown upon the time card in evidence? A. Yes, sir.

Q. What trains.

A. They have a couple of switch engines that does business between Council Bluffs and South Omaha.

Q. Have those engines any definite time for movement?

A. No sir.

90 Q. Does any other company not yet named operate any trains between Council Bluffs and South Omaha, or Omaha and South Omaha not shown on the time card already in evidence? A. No sir.

Q. Does the time card in evidence show the movement of Missouri Pacific trains from South Omaha through South Omaha and west? A. Yes.

Q. Does the time card in evidence show the movements of all Burlington trains through South Omaha and west over the Union Pacific track? A. They have some extras.

Q. When you say they have some extras does the Burlington daily operate trains through South Omaha west over Union Pacific tracks not shown on the time card? A. Yes sir.

Q. How many and what are they?

A. Why I presume they have possibly two in each direction.

Q. What are those? A. Freight trains, switch trains.

Q. Mr. Crawford, can you, in a general way, state the average number of trains operated by the Union Pacific and all other roads daily over the main tracks between Omaha and South Omaha which would include extras based upon your observation or any record you have kept of the movement of trains?

By Mr. Stickney: Did you keep a record of all movement of trains?

A. Yes sir.

Q. You have a record of that? A. Yes sir.

91 By Mr. Stickney: Why isn't that the best evidence?

By Mr. Rich: Yes, I presume we can just make an estimate.

Q. Have you with you a record showing the movement of trains over the main lines of the Union Pacific between Omaha and South Omaha for any given recent period?

A. I have one record here.

Q. What is that, an original record, a record that the company requires you to keep, or is it a copy of a record?

A. It is a copy of a record.

By Mr. Stickney: I should think it would save time if he would prepare a record and let us compare it with his original record.

By Mr. Kellogg: Let it cover for a month so that—

By Mr. Stickney: Say one month, thirty days.

By Mr. Rich: Mr. Crawford, will you have prepared a copy of the records kept showing the number of trains moving over the main lines of the Union Pacific between Omaha and South Omaha for the month of May?

A. Yes sir.

By Mr. Rich: When you have that prepared bring it here together with the copy that you have prepared.

Q. Mr. Crawford, you may name all of the railroad companies shipping freight to or through Omaha in car load lots or less than car load lots where the delivery of this freight is made by the Union Pacific Railroad Co.

92 A. Chicago & Great Western, Milwaukee, Northwestern, Rock Island, Missouri Pacific, Burlington and Missouri River, Minneapolis and Omaha, Omaha Bridge and Terminal at Omaha.

Q. And Wabash?

A. Comes through the O. B. & T.

Q. What about the Illinois Central?

A. That comes that way too, O. B. & T.

Q. Mr. Crawford, you may state the manner of handling a car load of freight delivered to you by the Chicago & Northwestern from the east destined for Omaha or for delivery to any other connecting carrier in Omaha?

A. The Chicago & Northwestern will deliver us a car you might say for an industry on our tracks operated within our yard limits and we will—

By Mr. Stickney: Where do they deliver it?

A. At 20th street. We will take that car and make direct delivery to this industry.

Q. Is that the same manner in which you deliver or transfer or make the interchange of freight delivered to you by either the Northwestern, Milwaukee or Rock Island roads?

A. Yes sir.

Q. Has the Union Pacific set apart any tracks either in Council Bluffs or Omaha upon which it receives car loads of freight for either of the three roads named?

A. We have tracks at Council Bluffs which the several lines deliver to us on, we have tracks at 20th street that we deliver from these same lines on.

93 Q. In what instances do you receive a car of freight from either of the three roads named at Council Bluffs and in what instances do you receive that at 20th street Omaha, what is the difference?

A. Cars at Council Bluffs that are destined west are delivered to us at Council Bluffs.

Q. To illustrate: If the Northwestern or Milwaukee or Rock Island should have a car of freight to be delivered to the Missouri Pacific at Omaha, where would either of those three roads deliver that car to you, Council Bluffs or Omaha?

A. Omaha.

Q. On the tracks you had named at 20th street?

A. Yes sir.

Q. In what case would the delivery be made to the Union Pacific at Council Bluffs?

A. For cars destined beyond Omaha on our line.

Q. To illustrate: If a car load of freight came over either of the three roads named above to be transported west over the Union Pacific, then the Union Pacific would receive this car of freight at Council Bluffs? A. Yes sir.

Q. Well, can you think of any other instance then, that a shipment over the Union Pacific west would be delivered by any one of these three roads to the Union Pacific at Council Bluffs? A. I don't know that I can.

Q. How are these tracks designated or numbered at 20th street, Omaha, on which you receive freight to be delivered to other roads, or to industries within the Union Pacific Yards at Omaha?

94 A. We have tracks number 5 and 6 at 20th street which we ordinarily receive on stuff for the connecting lines.

Q. Will you give a practical illustration of the manner in which the Rock Island would deliver to the Union Pacific on the tracks at 20th street a car of freight destined for an industry in Omaha on the Union Pacific line?

A. They will take a car to 20th street, set it out on one of the tracks set aside for receiving these cars and our switch engines will switch it out and take it down the hill, it to be delivered by engines working in that locality.

Q. If it goes in that direction? A. Yes sir.

Q. When you say the Rock Island will set it out, do you mean that a Rock Island switch engine would bring that car from Council Bluffs, or that it would be set out of a regular Rock Island freight train passing over the Union Pacific lines between Omaha and the connection at South Omaha?

A. It would be set out by a Rock Island switch engine.

Q. Under the practice and custom that prevails in Omaha with reference to this exchange, if there were six cars in the Rock Island freight train going west for delivery to the Union Pacific at Omaha, would they be set out of the freight train itself at 20th street or would they be dropped at Council Bluffs from the freight train and brought over by the Rock Island switch engine?

A. They would be brought over by a Rock Island switch engine.

Q. Then the freight trains of the various companies passing over the Union Pacific lines between Omaha and South Omaha and Council Bluffs do not stop to switch these various cars? A. Going west?

95 Q. Yes sir. A. No sir.

Q. In case the Rock Island had one or more cars of freight coming from the west to be delivered to some industry in Omaha or to some other road in Omaha where would the delivery of that car or cars be made?

A. By the Rock Island at 6th Street.

Q. Which one of those tracks at 20th street on which deliveries are made by the various roads as you have described?

A. Union Pacific.

Q. Which one of the tracks at 6th street that you have just described on which the delivery of the cars would be made by the Rock Island? A. The Union Pacific.

Q. You may state whether or not any other road running into Omaha over the Union Pacific main line between Omaha and South Omaha would deliver cars to the Union Pacific at 6th street?

A. The Rock Island is the only road that delivers to us at 6th street.

Q. Why does the Rock Island not make its delivery of cars from the west to the Union Pacific on the tracks at 20th street?

A. The tracks are so located that it is impossible to get in there coming from the west.

Q. Then the delivery at 6th street is a matter of convenience? A. Yes sir.

Q. Do any other roads than the Northwestern, Milwaukee or Rock Island deliver cars to the Union Pacific on the tracks at 20th street?

96 A. The Chicago and Great Western.

Q. Do any other roads than those four? A. No sir.

Q. Where the Union Pacific has received a car of freight for delivery in Omaha on the 20th street tracks and delivered that car to its destination, give a practical illustration of how the empty car is handled in delivering back to the road it was received from?

A. Take for example the Chicago & Northwestern, take a car from us for an industry on our tracks they deliver it to us at 20th street; we deliver the car to the industry where it belongs and when empty we will take the car out and place it on a track in the east end of the yard for the Northwestern.

By Mr. Stickney: East end of the 20th street yard?

A. 6th street.

By Mr. Rich: Q. Do you follow that same custom in delivering empty cars back to all of the roads from which you receive cars at 20th street?

A. With one exception we deliver to three lines in the east end and to Chicago and Great Western at 20th street.

By Mr. Stickney: What yard at 20th street?

A. In to the Chicago & Great Western yard.

By Mr. Rich: Then in delivering empty cars back to the Northwestern, Milwaukee or Rock Island, the delivery is made on a track at the east end of the yard, or in other words, at 6th street? A. Yes sir.

97 Q. Do you deliver empty cars on those tracks at 6th street to any other companies than the three just named? A. We do not.

Q. Where a car of freight has been delivered from the Chicago & Great Western at 20th Street in making a return of the empty car to the Great Western, where does the Union Pacific deliver it? A. At the Great Western yards at 20th street.

Q. When you say the Great Western Yards at 20th, do you mean you deliver it on the tracks that connect with the Union Pacific tracks at 20th street and extend northerly toward the—

A. The 16th street freight house.

Q. What company owns the track or tracks on which this delivery to the Chicago Great Western is made?

A. The Chicago & Great Western.

Q. Has this manner of delivering empty cars to the Chicago & Great Western been the custom since you have been with the Union Pacific road or since the Chicago & Great Western has had its yards and tracks constructed at that point?

A. Prior to about, I will say three months ago, the Chicago & Great Western Yardmaster asked me for a convenience for himself, to deliver our cars to him in that yard at Twentieth Street.

Q. That is, empty cars?

A. Any cars for the Chicago & Great Western. I complied with his request.

Q. In case the Union Pacific had a loaded car for its own line or for some other line of road, to be delivered to the Great Western, you say you would deliver that car to the Great Western on the same tracks where you deliver the empty cars? A. Yes sir.

Q. And that is by virtue of a request of the yardmaster of the Chicago & Great Western for his convenience as he expressed it? A. Yes sir.

Q. You say you began to do that about three months ago?

A. In the neighborhood of about three months ago.

Q. Had you prior to that time delivered either empty or loaded cars to the Great Western in that manner? A. No sir.

Q. Where had the empty cars prior to that time been delivered back to the Great Western?

A. On a track at Sixth Street.

Q. On one of the tracks on which delivery is now made to the Milwaukee, Northwestern and Rock Island?

A. One of those tracks parallel with those tracks, yes sir.

Q. And prior to three months ago in case you had a loaded car for the Chicago & Great Western, where did the Union Pacific deliver that car to the Great Western?

A. At Sixth Street.

By Mr. Stickney: At Sixth or Twentieth? A. Sixth.

By Mr. Rich: Q. I believe you said the Chicago & Great Western delivered all loaded cars on the tracks at Twentieth Street? A. Yes sir.

Q. Do you now or have you in the past delivered loaded cars to any other company on the Sixth street tracks than the Great Western?

99 A. We deliver to the Rock Island, Northwestern and Milwaukee.

Q. Loaded cars, I said? A. Yes, sir.

Q. In case the Union Pacific has loaded cars for delivery to the Northwestern, Milwaukee or Rock Island, are these deliveries all made at Sixth Street? A. Yes, sir.

Q. Does the Union Pacific deliver loaded cars to any other

companies at Sixth Street than the Chicago & Great Western, the Rock Island, the Milwaukee or the Northwestern?

A. We deliver only to the Rock Island, Milwaukee & Northwestern at Sixth Street.

Q. In the delivery of loaded cars from the Union Pacific to the Great Western has there ever been any other points of delivery than Sixth Street or the yards of the Great Western at Twentieth street? A. None that I know of.

Q. Let me ask you if it is not the practice or has not been the practice in delivering either loaded cars or empties to the yards in which are located what are known as the Stickney elevators, for the Union Pacific to deliver those cars over a track as shown in Exhibit 1 from a connection near Twentieth Street to a connection with the Great Western track at the edge of the Union Pacific right of way near Martha street?

A. In Omaha we make no other deliveries to the Great Western than that at Twentieth street in the Great Western yards.

Q. What other deliveries do you make to the Great Western other than in Omaha as you have designated them?

A. We have interchange tracks at Council Bluffs.

100 Q. What freight does the Union Pacific receive from the Great Western on those interchange tracks at Council Bluffs? A. The freight destined west of Omaha.

Q. Over the Union Pacific? A. Yes sir.

Q. What has been the custom with reference to the deliveries of loaded cars brought to Omaha by the Chicago & Great Western for delivery to the Rock Island, Northwestern or Milwaukee roads?

A. If a car was delivered to us we would not have anything on it and would send it back to the Chicago & Great Western.

Q. What do you mean by "would not have anything on it?"

A. We would have no interchange here for that purpose.

Q. Where would the interchange on a car bound for the east by the Chicago & Great Western for either the Northwestern, Rock Island or Milwaukee be effected?

A. Council Bluffs.

Q. Would the Union Pacific have anything to do with that interchange at Council Bluffs? A. No sir.

Q. In case the Missouri Pacific should bring a loaded car to Omaha for any other road having a right to use the Union Pacific tracks between Council Bluffs and South Omaha, how would the delivery of that car from the Missouri Pacific be made?

A. We would take it from the lower yard at Davenport street and deliver it to its destination to the line on which it is going.

Q. When you say you would take it from Davenport
101 street you may state whether or not there is a track at
Davenport street on which the Missouri Pacific would
deliver all loaded cars to be handled by the Union Pacific, for
delivery to any other route? A. There is, yes sir.

Q. In case the Chicago & Great Western, Northwestern,
Rock Island or Milwaukee had a car for delivery to the Mis-
souri Pacific, you may explain how that car would be handled?

A. That would be delivered to us at Twentieth street and
we deliver it to the Missouri Pacific at Davenport street.

Q. In case the B & M brought a car to Omaha for delivery
to the Great Western, Milwaukee, Northwestern or Rock
Island, you may explain where you would receive that car
from the B & M and how the delivery would be made?

A. We would get that car off the transfer near Douglas
Street in the lower yard and if the car was for the Great
Western we would deliver it at Twentieth street into their
yard, or if for the Northwestern, Milwaukee or Rock Island,
we would deliver it at Sixth street.

Q. Then it is true, is it, that the Union Pacific and the
Burlington for convenience, have set aside a track in the lower
yards near Douglas Street by which exchanges of cars as you
have described are made between those two roads? A. Yes sir.

Q. In case the Wabash should bring a car of stock into
Council Bluffs destined for the stockyards at South Omaha,
you may describe how that car would be handled from Council
Bluffs?

A. It would be delivered to the Union Pacific and the Union
Pacific take it to South Omaha and deliver it to the stock-
yards.

102 Q. I understood you to say, a moment ago, to say
that the Wabash business was handled by the O. B. & T?

A. Well, we very often handle a car of stock or cars of
stock in this manner for the Wabash.

Q. In case of dead freight, coal, for an example, coming
over the Wabash to Council Bluffs for an industry on the
Union Pacific lines in Omaha, how would that car be handled?

A. It is usually handled through the O. B. & T. in the
lower yards, but we have got stuff at Council Bluffs.

Q. Then there is no fixed custom with reference to that?

A. No, the O. B. & T. gets the most of it.

Q. In case it is handled through the O. B. & T. you may
state where the Union Pacific would then get that car for de-
livery.

A. We would get the car way down at Cass Street, connec-
tion set aside down there for the interchange of cars between
the O. B. & T. and the U. P.

Q. What other road beside the Wabash did you state was handled through the O. B. & T? A. The Illinois Central.

Q. In case of stock brought to Council Bluffs from the east by the Illinois Central, destined for the stockyards at South Omaha, state how that would be handled?

A. The O. B. & T. would take it from Council Bluffs to South Omaha on their own line operated by the Illinois Central.

Q. The O. B. & T. has a line to South Omaha?

A. Operated by the Illinois Central.

Q. In case of the exchange of cars between the Burlington and other roads having contractual relations with the Union Pacific you may state whether or not you both receive
103 and deliver cars to the Burlington at the Douglas street track as you have described?

A. Yes sir we have two tracks down there parallel.

Q. One for loaded cars—

A. One for receiving and one for delivery.

Q. Is that true in the arrangement with the Union Pacific at Davenport street? A. It is.

Q. You may state whether or not time card, exhibit 2, shows the movement of Burlington passenger trains over the bridge between Omaha and Council Bluffs? A. It does.

Q. Does the Burlington run any other trains between Omaha & Council Bluffs other than passenger trains?

A. It does not.

Q. It is a fact, is it, that the Illinois Central uses the Union Station for its passenger train service? A. Yes sir.

Q. You may describe how the Illinois Central reaches the Union Passenger station with its passenger trains?

A. They enter on to our track down in the lower yard about 300 feet north of the pump house down there.

Q. What street?

A. The old waterworks,—Burt Street; they proceed on our lower yard tracks up to Twentieth street pulling their train between Seventeenth and Twentieth, and if necessary, run around us, using the two tracks from Twentieth to Seventeenth Street and then up the side hill into the Union Station.

Q. That is, they get onto the main line at Twentieth street, on to the Union Pacific main line?

104 A. They don't go out on the main line at Twentieth street.

Q. Well, at what point?

A. They strike our passenger part of it about Fourteenth street.

By Mr. Stickney: Q. They don't go on to the main line at all?

A. I don't know whether you would term it the main line or not, it is on the passenger main line.

Q. Well, they don't go on to either of your two main tracks that the other trains [runs] on?

A. Entering in and out of the depot, yes sir.

Q. I understood you to say they did not?

A. They do not up at Twentieth street, they can get around a train without getting to the main line at Twentieth street.

By Mr. Rich: How long have you been connected with the Union Pacific road? A. Nine years.

Q. How long have you held your present position?

A. Nine months.

Q. What position did you hold prior to the time you became yardmaster? A. I was yardmaster at Kansas City.

Q. Then you have only been in Omaha nine months?

A. Yes sir.

Q. And you have been yardmaster during all that time?

A. Yes sir.

Q. You may state whether during the time you have been yardmaster for the Union Pacific at Omaha, any of the roads-to-wit: the Rock Island, Northwestern, Milwaukee or
105 Chicago & Great Western, being the roads that have the right to run over the Union Pacific tracks from Council Bluffs to South Omaha or to a point a mile and a half west of the depot in South Omaha, have ever made direct deliveries of cars or freight from one road to the other?

A. They have not, to my knowledge.

Q. Between the west end of the bridge and a mile and a half west of the station in South Omaha?

A. To my knowledge they have not.

Q. Have you ever known since you have been yardmaster at the Union Pacific of any one of the tenant or contract roads to attempt to make a direct delivery other than in the case of the Great Western road?

A. The Rock Island made the attempt at Twentieth street.

Q. When? A. I don't know the date.

Q. Within nine months? A. Yes sir.

Q. What did the Rock Island attempt to do at that point?

A. Attempted to go up to the Independent elevator.

Q. What did you do with reference to that attempt?

A. We didn't let them go up there.

Q. How were they prevented from going there?

A. Simply took the switches away from them.

Q. Did they ever make any other or further attempt than that one? A. Not that I know of.

Q. Have they ever since that time made the direct connection that was attempted at that time?

106 A. No sir.

Q. In case a car of mixed freight for Omaha or for merchants in Omaha should come over the Rock Island, Northwestern or Milwaukee from the east, how would that car be handled?

A. It would be delivered to us at Twentieth street and from there taken to our freight house.

Q. After the car had been unloaded how would it be handled?

A. Delivered back empty to the line that delivered the car to us, taking it back to Sixth Street.

Q. Are the three roads that I named the only roads in which a car of freight would be handled in that manner?

A. Yes sir.

Q. All other roads either have their own freight house or deliver through some other company? A. Yes sir.

Q. In case a shipper located on the Union Pacific tracks in the city of Omaha, desires to ship out of Omaha over the Great Western, Milwaukee, Northwestern or Rock Island, a car of freight how is that car furnished to the shipper?

A. The shipper places an order with my office for the car. We place the order with the road which is going to carry the freight out of town. They will deliver the empty to us.

Q. Where?

A. At Twentieth street; we will place the car to this man's place of business; after the car is loaded we will deliver it to the line over which it is going.

Q. And if it is to go to the Rock Island, Northwestern, or Milwaukee, you deliver it at Sixth street and if it is to go over the Great Western you deliver it in the Great Western yards at Twentieth street?

107 A. Yes sir.

Q. Has it ever been the practice for the Great Western, the Northwestern, the Milwaukee, or the Rock Island to set the car originally at an industry on the Union Pacific tracks for the purpose of loading? A. No sir.

Q. Has it ever been the custom or practice for either one of those roads to take a car so loaded on the Union Pacific tracks with their own switch engine and move it? A. No sir.

Q. Has it ever been the custom or practice for either of those roads or for either the Northwestern, Milwaukee or Rock Island with its own switch engines to deliver a car of freight destined for Omaha over the Union Pacific freight house? A. No sir.

Q. Has it ever been the custom or practice in your time in Omaha for either the Northwestern, the Chicago & Great Western, the Milwaukee or the Rock Island, to move a car either

empty or loaded over your tracks to any connection with any of the four roads? A. No sir.

Q. Where freight is brought from the east by the Rock Island, Milwaukee or Northwestern, destined for South Omaha for local district, how is that car handled?

A. If it is for any of the industries located on the Union Pacific tracks, it is delivered to us at South Omaha.

Q. Where in South Omaha?

A. On what is known as the short passing track opposite the passenger station.

108 Q. Has that been the custom and the practice since you have been with the Union Pacific road? A. Yes sir.

Q. And during the time you have been yardmaster do you know of any other custom or practice with reference to the delivery of freight in South Omaha than as you have stated it?

A. Do you mean delivered to any other line for delivery?

Q. No, for delivery to South Omaha? A. I do not.

Q. In case the Missouri Pacific should have an empty car to be taken to the Stickney elevators for loading, can you state how that car would be handled?

A. There are two ways or handling it, one that they would deliver to us at Davenport street in the lower yard and we would deliver the car to the Great Western at Twentieth street; the other is that they would deliver it at South Omaha to the stock yards company and then to the Great Western, on our tracks.

Q. In the case of stock brought in to South Omaha by the Milwaukee, Northwestern, Rock Island, in the case of the Rock Island either from the east or the west, how is that stock delivered to the Stock Yards Company.

A. From the East all of the lines deliver in to the stock-yards tracks pulling by Union Station and shoving to what you might call the west, I believe, or north, into the stock-yards tracks, delivered direct by their own engines. From the West the Rock Island will deliver to L street and shove down on the main track north of the main line.

By Mr. Stickney: Q. They deliver direct with their own engines?

109 A. Deliver onto the Union Pacific track.

Q. Would the Union Pacific switch in?

A. The stockyards comes out and gets it, otherwise the Rock Island would have to run around and switch in.

By Mr. Rich: Q. In the case of the carload of any freight such as grain for the Updike Elevator, or lumber for the lumber yard just south of the Updike elevator or freight for any of the packing houses brought from the east by either the

Great Western the Milwaukee the Northwestern or the Rock Island, how is that car handled?

A. That is delivered into the stockyards tracks through the N. street lead.

By Mr. Stickney: Q. Well, who delivers it?

A. The delivering line.

Q. They go there with their own engines and deliver it?

A. Yes sir.

By Mr. Rich: Q. After it is placed in the stockyards track how is the delivery then made to the elevator lumber yard or packing house? A. By the stock yards people.

Q. What do the stockyards people do with the car or how is the car handled after it is unloaded?

A. Delivered back to the delivering line.

Q. By whom? A. By the stockyards people.

Q. On what tracks?

A. On tracks at South Omaha set aside for that purpose by the Union Pacific.

110 Q. That is just at the foot of N street and crossing O and crossing Q extending from N south there are three or four tracks are there not, set aside for the purpose of delivering empty cars to the four tenant roads? A. Yes sir.

Q. In any instances do any of the tenant roads place loaded cars upon any of those four tracks for delivery to any other road or to any industries on the Union Pacific tracks?

A. They should not do it unless the Rock Island may deliver to them on their track.

Q. Unless the Rock Island deliver to who?

A. Unless the Rock Island may make a delivery there, otherwise the delivery is all made direct to the stockyards.

Q. Do any of the railroads running into South Omaha and carrying freight of any description or kind for delivery to the packing houses, make the delivery to the packing houses themselves?

A. They do not unless it might be the Rock Island have a little spur track of their own on the south of Swift's packing house.

Q. And with that exception none of the other roads make direct deliveries? A. No sir.

Q. In the case of packing house products loaded on cars for shipment over the various roads, how are those loaded cars handled, and who by?

A. By the stockyards people. They deliver them to the several lines on the tracks that we have set aside for them between M and Q streets.

Q. That is, if the delivery is for the Great Western, Northwestern, Milwaukee or Rock Island, the stockyards delivers on one of the four tracks you have told about before? A. Yes sir.

Q. In case of freight destined for shipment over the Burlington or Missouri Pacific how are the cars handled?

A. Is that in reference to the stock yards?

Q. No, that is packing house products coming out.

A. They would be delivered to the Missouri Pacific or Burlington at South Omaha in their own yards.

Q. By whom? A. By the stock yards company.

Q. During the time that you have been yardmaster at Omaha has it ever been the custom or practice for any one of the four tenant roads, Chicago, Great Western, Northwestern, Milwaukee or Rock Island, either at South Omaha or Omaha, to make any delivery on any track or tracks or spurs or to any industry or to any station or to any other road other than the one instance where they all deliver freight destined for the stockyards packing houses, industries on stockyards ground, to this stockyards track? A. No sir.

Q. Do you personally know anything about the arrangement with reference to that stockyards track or was that before your time? A. That was before my time.

Q. How many main line tracks has the Union Pacific between Council Bluffs and a mile and a half south or west of the Union Pacific station in South Omaha? A. Two.

112 Q. Do you know how many passenger tracks there are between Council Bluffs and a point south or west a mile and a half of the Union Pacific passenger station in South Omaha?

A. There are no assigned or regular passenger tracks.

Q. You may describe how the movement of trains of all kinds and classes between Council Bluffs and Gilmore are regulated?

A. They are regulated by a time table and book of rules governing the movement of trains, with the assistance of a bridge dispatcher.

Q. What is this bridge dispatcher, what are his duties?

A. To handle trains, that is, giving trains preference, keeping in touch with them, giving the preferred train the right.

Q. Between what points?

A. Between Gilmore and Missouri River Bridge.

Q. Then in addition to that there is a regular train dispatcher is there not, located at Omaha? A. Yes sir.

Q. Who governs the movement of trains between Omaha and Grand Island?

A. He regulates, that is, he handles the train orders, but not any trains between Omaha and Gilmore.

Q. When was this bridge dispatcher put on?

A. I would guess about sixty days ago.

Q. For what reason?

A. To help out on the movement of trains and avoid blockades.

Q. Mr. Crawford, you may state whether there is at the present time, with the number of trains the Union Pacific itself operates, and the number of trains operated by the tenant roads and in the manner that you have detailed, you may state whether or not there is at the present time any congestion or delay in the movement of trains between Omaha and South Omaha?

113 A. Oh, we very often get delays, freight trains among themselves, ordinarily since these dispatchers have gone on we have avoided delays to passenger trains.

Q. You may state whether owing to the number of trains operated by the Union Pacific and tenant roads there has been and is a congestion of traffic between Gilmore and Council Bluffs?

A. Well, more or less congested all the time, more especially when all are trying to get to South Omaha, or get out of South Omaha, going east.

Q. What in your opinion, Mr. Crawford, would be the effect of allowing the four tenant roads, to-wit: the Great Western, the Northwestern, the Milwaukee and Rock Island to make direct exchanges of cars with other roads or to make direct deliveries of freight to various points of destination along the tracks of the Union Pacific in Omaha and South Omaha, permitting all of the tenant roads to run over the Union Pacific tracks and each of the roads deliver cars into the Stickney elevators and take cars therefrom, with reference to the movement of business over the Union Pacific lines from Council Bluffs to Gilmore or a point a mile and a half south or west of the Union Pacific passenger station in South Omaha?

A. Between South Omaha and Council Bluffs I would rather imagine that business would be tied up at some times or very often for that matter, if they were allowed to each railroad come along there and they having a few cars stop at the Summit and set them out there, the next man would hang down a little and the next one down about Twentieth street and so on.

114 Q. Well, now, there are only so many cars to move, will you explain why it would interfere with traffic and blockade traffic to a greater extent if a given number of cars were moved by all of the tenant roads and the Union Pacific jointly and the case where this given number of cars was moved by the Union Pacific alone, as under the present custom and practice?

A. If each line were to make a direct delivery you would very likely have a few cars on the head and before the elevator, the remainder of his train would stand on the main line until he made his delivery and got back to his train with his engine. Take that for one line. The following line would stand behind him, and so on.

Q. You may state whether or not the Union Pacific with its switch engines could handle the given number of cars with less danger of congestion than there would be in having all of the tenant roads with switch engines for all of the roads handling the same number of cars at the same time?

A. Understand the reason, that if we say four lines had forty cars, we could take forty cars and make one direct delivery when the four lines would take up a considerable time, each one of them stopping and cutting off, going in to make this delivery and at the same time blocking everything at that point and this way from there.

Q. It would take just that many additional trains or switch engines with cars? A. Yes sir.

Cross Examination,

By Mr. Kellogg:

115 Q. You think that it would block your main tracks more to have grain delivered into the Independent Elevator on the Great Western grain terminals by the Union Pacific the way it is now done than to have the lines from the West delivered direct on to the Great Western Company's tracks, do you?

A. I think it would cause more delay to have the tenant lines make the delivery than it would the Union Pacific.

Q. Will you please look at this map Exhibit 1, the Great Western grain terminals, we will call them, are colored red, are they not?

A. Well, I don't know whether they are or not.

Q. Well, assume that they are. That substantially shows the location of them, doesn't it? Now, Mr. Crawford, how is grain delivered to the Independent Elevator on the Great Western tracks which comes from the West over the Rock Island road?

A. I don't know the arrangement that is made between the Great Western & The Rock Island, but I presume they get their grain at Council Bluffs.

Q. Do you mean to say that the Rock Island hauls it over the Union Pacific tracks from its connection south of South Omaha to Council Bluffs and delivers it to the Great Western there?

A. That is what I think they do.

Q. And the Great Western then takes it and hauls it back

over the Union Pacific tracks to the grain terminals near the Summit? A. I presume so.

Q. And delivers it into its grain terminals?

A. Yes sir.

116 Q. Well, isn't it a fact that grain coming over the Rock Island is hauled from the Rock Island connection south of South Omaha over the Union Pacific tracks by the Rock Island switch engine to the Twentieth street yards of the Union Pacific? A. No sir.

Q. And isn't it a fact that the Union Pacific takes its engine and delivers that grain into the Great Western Twentieth street freight yards? A. Not to my knowledge.

Q. Well, do you know whether that is a fact or not?

A. I am only speaking from knowledge and I think it is a fact.

Q. And isn't it a fact that the Great Western then takes that car and hauls it back to the Great Western grain terminals?

A. The Great Western hauls all that—

Q. Well, but that grain has to get over the Union Pacific tracks from the Rock Island connections in South Omaha to the Great Western terminals, doesn't it? A. Yes sir.

Q. How does it get there?

A. Well, the only way that I know is to make that interchange to the track at Council Bluffs.

Q. And you consider that is using your main tracks less than to have the Rock Island haul it a short distance into South Omaha over the Union Pacific tracks and put it right onto the Great Western terminal?

A. The Rock Island usually take their stuff through in solid trains.

Q. Now isn't it a fact that the Rock Island have yards at Albright? A. Yes sir.

117 Q. Albright is their connection with the Union Pacific at South Omaha? A. Yes sir.

Q. About a mile and a half or so south of South Omaha station? A. Yes sir.

Q. Now grain trains coming in there to be delivered to the Independent Elevator on the Great Western tracks are broken up there, ain't they?

A. Broken up where? I don't know what the Rock Island does at Albright?

Q. Now if they broke up their grain trains there, or trains having grain, then they would take those grain cars, under the present arrangement, and bring them down and deliver to you at 20th street, wouldn't they?

A. No sir.

Q. Who would they deliver it to?

A. A delivery of that kind has not been effected yet that I know of.

Q. Then you say the Rock Island has no way of getting grain to the Independent Elevator at all?

A. Well, they deliver it to the Chicago & Great Western.

Q. Where?

A. I think it is at Council Bluffs.

Q. It is not in the Union Pacific yards?

A. Nowhere on the Union Pacific track or yards.

Q. Then you consider, do you, that that would use the Union Pacific tracks less than to haul it a short distance and deliver it to the Great Western in their yards at the Independent Elevator?

118 A. At 20th street is where we do the great—

Q. Well, will you answer the question, please?

By Mr. Rich: Let the witness answer the question.

By Mr. Kellogg: I want him to answer the question. Read the question please. (Question read.)

A. Yes sir.

Q. That is, it uses the Union Pacific tracks less to haul it a distance of eight or nine miles and deliver it to the Great Western at Council Bluffs and then have the Great Western haul it six or seven miles back over the same track than it would for the Rock Island to haul it a short distance of a mile and a half over the Union Pacific tracks and deliver it right on the grain terminals? A. Yes sir.

Q. This map shows the distance from the Rock Island proposed connection at South Omaha to the connection with the Great Western grain terminals to be a mile and a quarter?

A. Yes sir.

Q. And you say that for the Rock Island to take a switch engine and put its grain over that mile and a quarter is a greater use of your tracks than for it to haul it clear to Council Bluffs to the Great Western and the Great Western haul it clear back and deliver it to the grain terminals, is that your statement?

A. The Rock Island take their stuff through in solid trains.

Q. Please answer the question?

A. It is a greater use and in the delay it would cause.

119 Q. Why is it a greater use?

A. It would cause more delay in that locality handling it in that manner than it would the way it is now handled.

Q. Now, the Missouri Pacific connects with the Union Pacific at South Omaha through the Union Stock Yards tracks, do they not? A. Yes sir.

Q. Over the O. B. & T. tracks?

A. I don't know what tracks they use down there.

Q. Well, the O. B. & T. belong to the Missouri Pacific?

A. I don't know.

Q. Well, the Missouri Pacific does make a connection with the Union Pacific tracks, through the Union Stock Yards track at South Omaha, does it not?

A. They come to our tracks through the stock yards there some way.

Q. Well, their connection is within a short distance from the proposed connection between the Union Pacific tracks and the Great Western terminal tracks, is it not?

A. That is, a connection runs around in here, but I don't think it is ever used.

Q. Well, the Missouri Pacific has one connection directly through the stock yards tracks, hasn't it? A. Yes sir.

Q. And that connection is within fifteen hundred or two thousand feet of the Great Western's proposed connection with the Union Pacific, is it not?

A. It would run about four or five thousand feet, wouldn't it?

Q. Well, how far is the Union Pacific connection
120 from the Great Western proposed grain terminal section?

A. Well, it would go from a short distance south of F. Street, to N street, South Omaha.

Q. What would go?

A. Well, there would be a distance between where the connection of the Missouri Pacific comes on to our track and the Great Western, about eight blocks.

Q. Now the Missouri Pacific has another connection direct on to the proposed Great Western terminal, has it not?

A. I am sure I don't know.

Q. How is the grain delivered to the Great Western grain terminals which comes off the Missouri Pacific from the west?

A. They would either deliver through the Stock Yards Company on to the lower yards to the Union Pacific and the Union Pacific deliver to them: at 20th street.

Q. If they delivered it through Union Stock Yards Company's tracks they would deliver it direct on to the Great Western grain tracks, wouldn't they?

A. The Union Stock Yards—they have no connection with the Great Western track that I know of.

Q. Well, how would they deliver it if they delivered grain through Union Stock Yards track?

A. On one of the tracks set aside for that purpose by the Union Pacific.

Q. Where located?

A. Between N and Q streets at South Omaha.

Q. Then what would become of the grain?

A. The Chicago & Great Western would let it stay there a while and then take it up to the elevators.

121 Q. The Chicago & Great Western would go in there with their switch engines and take it up to the Independent Elevator? A. Yes sir.

Q. Is it any greater damage to let the Union Pacific take it and deliver it direct than to let the Great Western go out with its engines and get it?

A. I don't know anything about any arrangement of that kind.

Q. Well, suppose there was such an arrangement; would it be any more use of your tracks to have the Missouri Pacific deliver it direct than it would for the Great Western to go out and get it?

A. If those were your tracks and the Great Western made connection and had no connection with the Union Pacific, I don't see where it would interfere with our business?

Q. But you say now if the Great Western was going to deliver grain to the terminal tracks it would be delivered on the Union Pacific tracks by the Missouri Pacific Company?

A. No, by the Stock Yards Company.

Q. Then the Great Western would take its engine and go on to that track and get it and put it in its grain terminals?

A. Yes sir.

Q. Over the Union Pacific tracks? A. Yes sir.

Q. Now tell me of some reason why the Missouri Pacific should not deliver it direct to the Great Western instead of having three deliveries there?

A. It is not for me to say when the other lines have their own connections, what they shall do.

Q. Well, you can see no objection if the Stock Yards Company is willing to do it, can you?

122 A. The Stock Yards Company can't get up on to that track.

Q. Well, if the deliveries in the form I have stated, the Union Pacific performs no service, makes no intermediate switch, does it? A. For the Missouri Pacific?

Q. Yes. A. At South Omaha?

Q. Yes. A. For the elevator?

Q. Yes. A. No sir.

Q. Then, as far as your company is concerned, there can be no objection to the Missouri Pacific delivering it direct to the Great Western instead of the Great Western going to the Missouri Pacific to get it? A. That is not for me to say.

Q. Well, you see no objection, do you?

By Mr. Stickney: You see no physical, practical objection, not the objection of the company, but a practical objection.

A. When you have a connection with another line off of our tracks that is out of our hands.

Q. Well, but this connection is over our tracks, isn't it, would be over your tracks?

By Mr. Rich: Mr. Kellogg, says what is the difference between the Great Western running down our tracks with an engine to the track that it has a right to set its car on there and hauling back a car of grain in to the terminal, what is the difference between the Great Western doing that and the
123 Missouri Pacific running right in onto these tracks and over the same track and doing the same thing.

A. Under the arrangement the Missouri Pacific would have no right to go—

Q. Would there be any physical difference?

A. There may be more trains.

By Mr. Kellogg: Would there be any more trains for the Missouri Pacific to take a car of grain and haul it straight through and deliver it to the Great Western than it would be for the Missouri Pacific to haul it out on the Missouri Pacific tracks and leave it and then for the Great Western to go and get it and haul it in?

A. The Missouri Pacific would not be the only delivering line to the Great Western at South Omaha.

Q. Now if grain is delivered by the Missouri Pacific at Davenport street it is hauled clear around the O. B. & T. north of Omaha and delivered to the Missouri Pacific yards in North Omaha isn't it? A. Yes, sir.

Q. Then if it is going to the Great Western grain terminals how is it hauled from there?

A. We take it from the Douglas street yard to the Great Western yard at 20th street.

Q. You would do that? A. Yes, sir.

Q. To do that you would have to haul from your yards through the City of Omaha to a connection with your main tracks near 20th street, do you now, and from 20th street you would deliver it to the Great Western on its freight yard, wouldn't you?

124 A. Yes, sir.

Q. Then the Great Western would have to take an engine and deliver it to its 20th street yards around to the grain terminal yards, would it not? A. They would.

Q. Right out of their yard up to the lead on their own yard?

A. They wouldn't go on to our main line at all in that case.

Q. You would have to go on to your main line, wouldn't you? A. Yes, sir.

Q. Now, deliveries by the Missouri Pacific to the Great

Western at South Omaha could be made without using your main line tracks at all, couldn't it?

A. Not under the present way. The tracks are tied up there.

Q. Well, it would use your tracks very much less wouldn't it, than to deliver it say down here at Davenport, wouldn't it? A. Why I can't see why.

Q. Now, the Rock Island Company, the Northwestern, the Milwaukee and the Great Western deliver all freight from the Union Stock Yards on any industry on the Union Stock Yards track direct to the Union Pacific Stock Yards Company track at South Omaha, do they not? A. Yes, sir.

Q. Without any intermediate switching by the Union Pacific? A. Yes, sir.

Q. Hauling the stuff from Council Bluffs to a connection with the Union Pacific Stock Yards tracks with their own engine? A. Yes, sir.

Q. And put in on Union Stock Yards tracks with their own engines?

125 A. Yes, sir.

Q. The Rock Island and the Northwestern deliver all stock and other stuff from the west destined to the Union Stock Yards tracks or any industry on their tracks in the same way do they not?

A. The Rock Island and the Northwestern Company?

Q. The Northwestern Company had no connection with us. I don't know anything about that. The Rock Island delivers to the Stock Yards Company on track No. 4—that is the fourth track from the main line.

By Mr. Stickney: Suppose the Rock Island Company comes in with a train made up half of live stock and half of dead freight going through to the east, do they make that all up in a train and come out on to the Union Pacific Company track and switch the live stock from that train into the stock yards company? A. Right there at South Omaha?

Q. Do they do it that way?

A. Make a delivery right to the Stock Yards Company?

Q. No, but do they make it up in a train and stop that train and switch that out, or do they switch that stock out at their yards up there and move it down with a switch engine?

A. Well, they come up there and very often set out through L street.

Q. The question isn't through L street or K street or anything else, but the question is, as a matter of operation, don't they stop their trains up at Albright and switch out the stock there and the switch engine take that stock down and deliver it to the stock yards, isn't that the way they operate it?

126 A. The Rock Island at Albright?

Q. Yes.

A. Well, I am sure I couldn't say as to that. I have known of trains running up and setting their stock through L Street shoving it down on track No 4, but what is the regular custom I am unable to say as to that.

By Mr. Kellogg: Well, the Rock Island Company delivers all stock and other freight from the west to the Union Stock Yards Company direct without any intermediate switching by the Union Pacific, does it not? A. Yes, sir.

Q. Delivery by the Rock Island of stock for the west or any other freight for the west destined to the Union Stock Yards track or any industry on its track is made without any intermediate service performed by the Union Pacific?

A. Yes, sir.

Q. In all deliveries by any one of those four companies to the east through the Union Stock Yards Company or any freight they deliver it with their own engines on to the Union Stock Yards track do they not? A. Yes, sir.

Q. In receiving freight from the Union Stock Yards Company to go to the east, the Union Stock Yards Company deliver the freight on to a side track or delivery track owned by the Union Pacific at South Omaha, do they not?

A. Yes, sir.

Q. But that delivery is not made by the Union Pacific, is it? A. No, sir.

127 Q. Then the four eastern lines come with their own engines to South Omaha and take that freight and haul it back with their own engines, do they not?

A. Yes sir.

Q. In delivering stock the Rock Island Company would either run in on to the South Omaha Stock Yards tracks or deliver it on to the Union Pacific tracks and the South Omaha Stock Yards Co. would come out and get it with their engines?

A. Yes sir.

Q. But the Union Pacific performs no service whatever?

A. No sir.

Q. In any deliveries to or from any of the four roads to or from any industry on the Union Stock Yards tracks, does the Union Pacific perform any services whatever?

A. No sir.

Q. Now you know the Rock Island Company have a yard at Albright?

A. Well, they have a town up there, I don't know anything about the yards.

Q. Don't you think it is true when they have stock destined for the Union Stock Yards Co. or grain destined to the Omaha elevators that they back up their trains there and bring it in with a switch engine?

A. I don't know.

Q. Well, you never knew them to take a full loaded train down on your tracks there and break it up and bring it in to the grain terminals in Omaha? A. No sir.

Q. And you never knew them to bring a whole load down there and break it up that way and bring it in to the
128 Union Stock Yards, have you?

A. Well, they deliver to the Stock Yards, yes sir.

Q. But they don't bring a full train of various kinds of freight there and break it up there and deliver it, do they?

A. No sir.

Q. Well, they break them up at Albright don't they?

A. I don't know.

Q. Well, they are not broken up on your track, are they?

A. No sir.

By Mr. Stickney: Didn't you say in your direct testimony that if the Rock Island ever brought in any stuff from the west to be delivered to industries on Union Pacific tracks in Omaha that they delivered that stock at 20th street or 6th street one or the other?

A. The Rock Island would deliver it to us at 6th street.

Q. Well, now do they bring that down in a train and stop that train and switch it on to the bridge to bring that stock in to 6th street? A. Yes sir.

Q. Switch that train?

A. No, sir, they bring that stuff all in there in a bunch and set it in to us with their road engine.

Q. Set out part of that train?

A. Anything that belongs to the U. P.

Q. They stop their train and switch it out the same as they would to a local station?

A. Well, they set it out same as they would out of a through freight train.

129 Q. They wouldn't do any switching down there to set it out? A. Well, they back in.

Q. And the train stands there? A. Yes sir.

By Mr. Kellogg: Now you stated that neither the Northwestern, the Great Western, the Rock Island, or the Milwaukee have ever made direct deliveries to each other between the west end of the bridge and a point a mile and a half south or west of the South Omaha Stock Yards station, did you not?

A. They never have to my knowledge.

Q. Well, now, as a matter of fact, there is situated at Council Bluffs a yard which you call the pool yard, isn't there?

A. Yes sir.

Q. The Rock Island, the Milwaukee, the Northwestern all have their tracks come into that yard have they not?

A. Yes sir.

Q. So that freight to be interchanged between them is more conveniently interchanged at that point, isn't it?

A. Between—

Q. The Rock Island, the Milwaukee and the Northwestern?

A. They interchange down in the east yard, yes sir.

Q. Well, it is more convenient to interchange there, isn't it?

A. Yes sir.

Q. So there is no occasion for their hauling it across the bridge and exchanging over in your yards on this side?

A. Why in the case of Milwaukee, Rock Island and Northwestern, did you say, no, there is no necessity in coming over here to make the change.

130 Q. Well, it is more conveniently made in Council Bluffs? A. Why yes.

Q. Now, then, all of those companies interchange freight with the South Omaha Stock Yards, don't they, direct?

A. Yes sir.

Q. Neither one of those companies, the Rock Island or the Milwaukee have any freight house in Omaha, have they?

A. No sir.

Q. And all of their local freight from Omaha is delivered to the Union Pacific and by the Union Pacific distributed to its own team tracks and its own freight house in the north yards north of the station.

A. In the lower yards or side hill yards.

Q. In the lower yards, isn't that true?

A. It is called the side hill yards 9th and Jones.

Q. That is true, isn't it? A. Yes sir.

Q. Do you also deliver the Northwestern freight to your team tracks and freight house in the same way.

A. We do handle some Northwestern in the same manner.

By Mr. Stickney: A large amount or a small amount?

A. I cannot say as to that.

Q. The most of that stuff they bring in from the east they carry around by Blair and bring into the city around from the north, don't they?

A. I don't know as to the amount of business done.

By Mr. Kellogg: Well, the freight that the Northwestern delivers locally to Omaha through its own freight house is hauled around by Blair and delivered over its own tracks in North Omaha, isn't it?

A. I presume so.

Q. So that all local freight which you receive from the

Rock Island, Northwestern and Milwaukee Companies is delivered through your own freight houses and own team tracks because they have not got any, isn't it? A. Yes, sir.

Q. And that is delivered to you at what place?

A. At 20th street.

Q. Then there is no occasion for any other delivery than that is there? A. I don't know as I understand you.

Q. The Northwestern, the Milwaukee and the Rock Island have never pretended to run their trains on your tracks in the north yards have they? A. No sir.

Q. Now the Great Western, you don't handle their freight, do you? A. No sir.

Q. They have their own yards, haven't they? A. Yes sir.

Q. At 20th street, and their own grain terminals at the Summit? A. Yes sir.

Q. So they are in a different position than the Rock Island, the Northwestern and the Milwaukee, are they not?

A. Yes, they are.

Q. Now, you stated also that freight to be delivered on any industrial track belonging to the Union Pacific in Omaha and coming over from the Great Western, Rock Island, Milwaukee or Northwestern is delivered to the Union Pacific in the 20th street yards? A. Yes sir.

Q. The reason of that is because to deliver that freight to the consignee, you are obliged to run over industrial tracks belonging to you, are you not? A. Yes sir.

Q. And the trains of none of those companies have ever claimed or pretended to run their trains over your industrial tracks, have they? A. No sir.

Q. So that would be the natural way of delivery wouldn't it? A. Yes sir.

By Mr. Stickney: The Great Western never claimed the right to use any of those tracks down there as industrial tracks, did they? A. No sir.

By Mr. Kellogg: Now the Rock Island Company also delivers freight at South Omaha to the Missouri Pacific without any intermediate switching by the Union Pacific, does it not?

A. The Rock Island, I don't know whether they do or not.

Q. Doesn't the Rock Island Company take freight destined to some point on the Missouri Pacific road beyond Omaha to South Omaha and deliver it to the Missouri Pacific Company direct without the intervention of any switching by the Union Pacific?

A. I don't know whether they make that kind of an interchange or not.

133 Q. Well if they do that you would have to modify your question about the Rock Island interchanging freight with other companies, wouldn't you?

A. Interchanging, what do you mean?

Q. Interchanging at South Omaha?

A. If there is any interchanging it would be effected through the stock yards.

Q. Now you said the Wabash made no delivery to any of the companies in South Omaha, they don't run their trains over your tracks between the Union Station and South Omaha, do they? A. No sir.

Q. And so far as you know have no rights over these tracks, or never have claimed them?

A. Never have claimed them.

Q. Now the Milwaukee Company receives freight and delivers freight on to a yard which it uses located near the Summit about opposite the Great Western grain terminals does it not?

A. They occasionally store a few stock cars up in that yard.

Q. Well, there is a yard there opposite the Great Western grain terminals which is used exclusively by the Milwaukee road isn't there? A. No sir.

[Q.] No sir.

Q. Well, it is used by the Milwaukee road isn't it?

A. There are stock cars placed there by those people.

Q. They are storage tracks there are they not?

A. I wouldn't term them as storage tracks, if we wanted to use them we would use them to run trains on.

Q. What are they used for?

134 A. Stock cars stand there and some of them we use in getting out loaded dirt trains, etc.

Q. Well, the Milwaukee stores stock cars there does it not?

A. Yes sir.

Q. And runs in there with its own engines on to those tracks does it not? A. Yes sir.

Q. Those tracks belong to the Union Pacific do they not?

A. I believe they do.

Q. They take cars out of there and run them up to the Union Stock Yards and have them loaded with stock, don't they? A. I think they do.

Q. And with their own engines do they not? A. Yes sir.

Q. No intermediate switching with the Union Pacific?

A. No sir.

Q. Does the Rock Island do the same?

A. I don't know that they have ever done it.

Q. Where do they store their stock cars?

A. I could not say as to that.

Q. All of the industries in Omaha which you speak of to which cars are delivered by the Union Pacific that are received off of the Rock Island, Northwestern, Milwaukee and Great Western at 20th street are situated on the Union Pacific tracks, are they not? A. Yes sir.

Q. And situated on tracks that the Great Western, Northwestern, Rock Island and Milwaukee never have used or claimed to use are they not?

135 A. Not to my knowledge.

Q. You never have known them claiming the right to use them? A. No sir.

Q. Now the Great Western or the Mason City & Fort Dodge, I use them interchangeably as the same company, undertook to deliver a car of stucco to the Rock Island road at the Rock Island connection at South Omaha on the 27th day of April did they not?

By Mr. Rich: Objected to as improper cross examination.

A. I don't know just the time.

Q. Well, about that time, didn't they?

A. I cannot say as to that.

Q. Well, they did undertake to deliver a car about that time, did they not?

A. They undertook to make a delivery.

Q. On to the Rock Island tracks? A. Yes sir.

Q. At South Omaha? A. Yes sir.

Q. And you prevented it? A. Yes sir..

Q. Was Mr. J. M. Henry there? A. Yes sir.

Q. Who is he?

By Mr. Rich: Objected to as improper cross examination.

A. Yard master at South Omaha.

Q. Yard master of the Union Pacific road?

A. Yes sir.

136 Q. What is your position?

A. General yard master.

Q. Are you over Mr. Henry? A. Yes sir.

Q. Did he do that under your direction?

By Mr. Rich: Objected to as improper cross examination.

A. Yes sir.

Q. Did you have directions from Mr. Mohler, the General Manager?

By Mr. Rich: Objected to as improper cross examination.

A. No sir.

Q. Did you have directions from any body?

By Mr. Rich: Objected to as improper cross examination.

A. Yes sir.

Q. Who from?

By Mr. Rich: Objected to as improper cross examination.

A. Mr. Ware.

Q. Who is Mr. Ware? A. Superintendent.

Q. Those were directions not to allow the Great Western to make a delivery to the Rock Island direct were they?

By Mr. Rich: Objected to as improper cross examination.

A. Yes sir.

Q. And you refused to allow them to do it?

137 By Mr. Rich: Objected to as improper cross examination.

A. Yes sir.

Q. Do you know Mr. Henry Swagtk?

By Mr. Rich: All cross examination with reference to the attempt to deliver, to be taken under the same objection.

A. Yes sir.

Q. Who is he?

A. He is switch tender at South Omaha.

Q. Did you direct him to throw the switches so they could not get on to the Rock Island connection? A. No sir.

Q. What did you direct him to do?

A. I directed Mr. Henry and he directed Mr. Swagtk.

Q. What to do?

A. Not to allow them to effect an interchange.

Q. They prevented it did they? A. Yes sir.

Q. How did they do it?

A. By locking the switches.

Q. They also turned the switch and ran the Great Western and car off on to another track, didn't they?

A. They run them down the scale track.

Q. Now you say you also prevented the Rock Island Company from delivering a car on to the grain terminal of the Great Western?

By Mr. Rich: Objected to as improper cross examination.

A. Yes sir.

138 Q. What did you do to prevent it?

A. I ordered my switch tenders at 20th street to not allow it to be made.

Q. Did they lock the switch?

A. They did after the yard master of the Rock Island personally tried to go into the Great Western yard.

Q. The yard master brought a car down there and undertook to deliver it on to the Great Western grain terminal, did he not?

A. Yes sir.

Q. And you ordered Mr. Henry to lock the switches?

A. No sir, this was at 20th street.

Q. Well, who did you order to do that?

A. The switch tenders at 20th street.

Q. And it was done? A. Yes sir.

Q. And you prevented them from delivering that car?

A. Yes sir.

Q. Well, that was about the same time that the other attempt was made or shortly afterward, was it not?

A. It was later, I can't say just how much.

Q. A few days later, was it?

A. Yes sir, sometime later.

Q. Did you put a Yale lock on that? A. Yes sir.

Q. So the Great Western or the Rock Island couldn't open it? A. Yes sir.

Q. Posted a man there and kept him night and day did you not? A. Yes sir.

139 Q. Directed him to prevent the Rock Island Company or any other company from delivering any grain on to the grain terminals or cars? A. Yes sir.

Q. Or receiving any cars of the grain terminal?

A. Prevented them from making any interchange or delivery to, anyone going in to the Great Western with the exception of the Great Western or the Union Pacific.

Q. You did the same at 20th street Great Western yards?

A. This is the 20th street I am talking about.

Q. You also locked the switch leading directly from the Union Pacific tracks in to the grain terminal tracks, did you not? A. Yes sir.

Q. And you did the same as you did at 20th street?

A. This is at 20th street.

Q. Well, there are two connections, aren't there, one near Martha? A. Yes sir.

Q. And you locked that also? A. Yes sir.

Q. And gave the same directions? A. Yes sir.

Q. And prevented them from using that?

A. Yes sir. Prevented any one but the Great Western.

Q. From whom did you receive your orders to do that?

A. From Mr. Ware.

Q. Did you give any orders in relation to those switches to Mr. Henry? A. No sir.

140 Q. You gave those direct to the switch tenders?

A. Yes sir.

By Mr. Stickney: You testified that if all the companies

were permitted to deliver grain on to these grain terminals with their own engines that they would go down with a train and stop on the main track and switch out the cars for the grain terminals, and they would make a blockade. Now suppose instead of doing it that way the Rock Island Company used its switch engine and took six cars of grain from Albright and took them down there and switched them in, would it take any longer for them to switch them on to the Great Western than it would into your 20th street yard?

A. Well, they wouldn't deliver to us at 20th street.

Q. Well, suppose they did, or at 6th street it don't matter which, suppose they took what cars of grain they had at Albright with the switch engine and brought them down, would it take any longer for them to deliver them to the Great Western at 20th street than it would to deliver them to the Union Pacific at 20th street or 6th street?

A. As far as they are concerned it might not take them any longer but they would be in our way while they were effecting this delivery.

Q. They would not be in your way any longer than they would be if they were delivering to you at 20th street would they?

A. No, but they would not deliver to us at 20th street.

Q. But suppose they did deliver to you at 20th street, suppose they did deliver it there in that way, would it make any more of a blockade to deliver it direct to the Great Western than it would to deliver it to you there?

141 A. The delivery could not be effected at 20th street without causing a great delay.

Q. Well, at 6th street then?

A. Well, at 6th street, it would be a hard matter to handle even at 6th street.

Q. Well, would it take any longer or would it blockade the tracks any more to deliver them direct to the Great Western than it would to deliver them direct to the Union Pacific?

A. The Union Pacific would be in a better position the way I figure it to set a time for a delivery of this kind, getting their stuff all together and in shape to make a delivery of that kind rather than have roads indiscriminately jumping in and out of these places.

Q. Well, I would like to have you answer my question; whether it would blockade the tracks any more or take any longer to deliver direct to the Great Western than it would to deliver to the Union Pacific?

A. Possibly not with one train.

Q. It would not take any longer?

A. But if one train goes down there and takes it and then another one comes right behind?—

Q. I am not talking about the train, I am talking about a switch engine. Now that switching is done under your direction, isn't it? A. Yes sir.

Q. You can specify the times for other roads to make deliveries just as well as you can your own times to make deliveries, can't you?

142 A. You can, but it would be a hard matter to say to all these tenant roads, "you must come at such a time or you can't come at all".

Q. Well, perhaps not as arbitrarily as that, but you do now in effect, make the time within reason, that is—

A. Well, they go on their own time now, avoiding regular passenger trains.

Q. Well, now, supposing you say that the only way that grain can be delivered from the Rock Island to the Great Western to the Independent Elevator Company is to haul that grain through over your bridge to Council Bluffs, then switch it over to the Great Western and the Great Western switch it back over the same ground to 20th street to the grain terminals; now supposing the Rock Island should set that grain out on the Union Pacific track near their junction at Albright, you would switch it down there wouldn't you if they had ten cars of grain that they wanted to go to the Independent Elevator they would put it on that track there at the Union Stock Yards, you would send a switch engine and switch it down there, wouldn't you?

A. Switch it to the grain terminals at 20th street if the agreement was made to do that, yes sir.

Q. Well, haven't you got a schedule of switching rates between those points?

A. I presume that the agents have, we handle cars subject to the billing.

Q. Yes, you would do that now, wouldn't you?

A. Well, I am sure I don't know whether you would or not I presume that we would though.

143 Q. Don't you know whether you have a schedule tariff from South Omaha to the Independent Elevators?

A. I can't say as to whether we have or not, I don't know.

Q. Well, now suppose you do, that movement would require the Rock Island engine to come out on to your main track and put the cars on to their track at South Omaha, then it would require your engine to go up and take it off of that and take it down to the grain terminals, wouldn't it, that would take two engines to do that work; now, would it consume any more time, or use the track any more to have the Rock Island engine go right along and put it into the grain terminals and make one movement do the whole thing instead of two?

By Mr. Rich: Objected to as a hypothetical question for the

reason that it assumes as facts things not proven, and assumes as facts things directly contrary to what have been proven.

A. In the first place the Rock Island wouldn't use our main line—

Q. I wish you would answer that question, would it take more time or use the tracks any more to have one engine do it one time or two engines do it two times?

A. There would be only one engine on the main line at any time.

Q. Well, you do not want to answer the question whether it would consume more time or occupy the track more?

A. Well, it would not consume any more time.

Q. It would not occupy the track any more to have it all done with one engine than it would to have it done with two?

A. No sir, we could get the grain all together and at 144 some stated time make a direct delivery.

Q. You say you have only two main tracks between Council Bluffs and South Omaha? A. Yes sir.

Q. And no passing tracks? A. No sir.

Q. What are all these tracks along side the main tracks?

A. Working tracks.

Q. Well, they are tracks on which you run trains, passenger trains, are they not, and switch trains?

A. We switch trains.

Q. No passing tracks among them?

A. There is no tracks that stay open all the time before the passing of trains.

Q. But there are tracks on which trains pass other than the two main tracks, aren't they? A. No sir.

Q. Well, there are tracks on which these companies place their trains temporarily, or from day to day are they not?

A. Well, we ordinarily don't have trains standing on tracks only for switching purposes from either our yard or some of the lines out of South Omaha.

Q. Now you said if shippers delivered freight to the Union Pacific to be shipped over the Great Western, the Milwaukee the Northwestern or the Rock Island you would deliver that freight at 6th street and those companies would obtain the freight there at 6th street?

A. Cars originating at our tracks at Omaha?

Q. Yes?

145 A. Would be delivered to the line to which it goes at 6th street with the exception of the Great Western and they would be delivered at 20th.

Q. That is because the car originates on an industry track which none of these companies use, or even have a right or claim to use, isn't it? A. Yes, sir.

Q. And of necessity the Union Pacific must deliver it to some place where one of these four companies can get it?

A. Yes sir.

Q. And do you deliver to those three companies at 6th street? A. Yes sir.

Q. And to the Great Western in its 20th street yards?

A. Yes sir.

Q. So when you say it has never been the custom for one of these four roads which I have just mentioned to deliver to any one of the other roads between South Omaha and the west end of the bridge, it is because there has been no necessity for delivering to those other roads, because deliveries were more conveniently made at other places, is it not?

A. We have never effected a delivery to my knowledge.

Q. There was no necessity for it was there?

A. No, I cannot see any.

Q. The Rock Island when it had freight going west on its own line ran its trains over your tracks from Council Bluffs on to its own tracks at Albright, did it not? A. Yes sir.

Q. The Northwestern did the same thing unless it went around by Blair, did it not?

146 A. Well, the Northwestern runs one train I believe, over our line.

Q. Now the Northwestern connection this side of the Union Stock Yards there near the Great Western terminal has not been made many years, has it?

Q. The Milwaukee, if it has freight for any of those two roads going west, its convenient place is to deliver it at Council Bluffs, isn't it? A. Yes sir.

Q. But all of these roads deliver freight to all industries on the Union Stock Yards tracks, don't they?

A. At South Omaha.

Q. Now are there any other industries between South Omaha and the Bridge except those on the Union Pacific tracks, I mean that are accessible by these roads?

A. I don't just understand your question now.

By Mr. Stickney: You have been in the railroad business for a long time. Isn't it the custom of railroads that have their terminals in large cities like this, Kansas City, and Chicago, and all those places, to have what is known as an outside yard, which is the end of the freight train run, isn't that usual?

A. Well, they have in some yards that I know of, the Union Pacific, we have what we call our receiving yards, that is Armstrong; the Santa Fe have what they call an outside yard.

Q. What I mean is, they have these roads that terminate here in Council Bluffs, now they all have yards there and

round houses and all the conveniences of taking care of an engine, etc., now the crews bring their freight trains in
147 here and the road engine is discharged and goes to the round house and the road crew is discharged and then the stuff is dealt with with the switch engine; the switch engine manipulates it, separates it out, that going to Omaha is separated out and taken over there, those that are going to the Union Pacific are delivered here somewhere and those going to other roads are delivered here; but the freight run ends here; that is the custom over all the country, isn't it?

A. That is the end of those several railroads in Iowa, of course.

Q. Well, take it in Chicago. Are you acquainted in Chicago? A. Yes sir.

Q. Well, haven't all the roads there got outside yards outside the city which are the end of their freight runs?

A. Yes sir.

Q. And then everything is distributed from there by switch engines? A. Yes sir.

Q. Now, then, most of the freight trains on the Union Pacific are made up over here, aren't they?

A. Well, yes, there are two made up here.

Q. Now these roads that bring in stuff for the Union Pacific have connections here and the reason why they deliver it here is because this is the end of their run, it is a short switch over there and that is where the Union Pacific would rather have it, they would rather take it there if it is going away on west, than to have it brought on to Omaha, wouldn't they?

A. Well, we have a different business in South Omaha than we have in Council Bluffs, that would be the only logical place to receive it.

148 Q. Now, that is the reason why these transfers from one road to the other are done in Council Bluffs, because as the roads are laid out that is the most convenient place to do it? A. Yes sir.

Q. It would be much more convenient to do it here than it would be over in these crowded districts here in Omaha?

A. Yes sir.

Q. Well, that is the reason why those transfers are made here in Council Bluffs, and that is the reason why these roads have never attempted to make any transfers over in Omaha, because it is more convenient and cheaper for them to do it there, isn't it? A. Yes sir.

By Mr. Kellogg: You stated that this bridge district or yards extends from Council Bluffs to Gilmore? A. Yes sir.

Q. That is the yard limits is it? A. Yes sir.

Q. And you have jurisdiction over all of that as yard master? A. Yes sir.

Q. And all trains within that district are operated under your direction? A. Yes sir.

Q. And that entire distance is operated as a yard isn't it?

A. Yes sir.

Q. And extra trains and switching trains move under your direction? A. Yes sir.

149 Q. The Milwaukee, the Northwestern, the Rock Island and the Great Western all operate extra trains from Council Bluffs to South Omaha under your direction?

A. Yes sir.

Q. And switching trains? A. Yes sir.

Q. Now that track has the block signal, hasn't it?

A. Yes sir.

Q. How far apart are the blocks?

A. Oh, various distances.

Q. Are they automatic block signals? A. Yes sir.

Q. Now if an extra of the Milwaukee, a stock train, is going out of the Union Stock Yards to Council Bluffs, how do you handle it?

A. The conductor of that train will notify the switch tender that he is ready to go, the switch tender will call our yard dispatcher, and if there are no passenger trains he will be allowed to proceed.

Q. That is the way all switching is done by those companies between Council Bluffs and South Omaha, isn't it?

A. Between the west end of the Missouri River bridge and Gilmore.

Q. So that if any part of that track is to be used by one of these companies for switching any freight it is done in that same way?

A. Yes sir, where they are in touch with the main line.

Q. While they are on your main tracks they are handled in that way? A. Yes sir.

150 Q. So that whether the Great Western, the Rock Island, the Milwaukee or the Northwestern switch cars between the grain terminals and their line or haul them from the Stock Yards tracks to the bridge, they would be handled in the same way? A. Yes sir.

Q. You handle your own trains in the same way?

A. Yes sir.

Q. So they are all under your control and your dispatcher's control? A. Yes sir.

By Mr. Stickney: How close are trains permitted to run to each other?

A. Well, they can get very close at times.

Q. But how close are they permitted?

A. One block apart. That is, there must be a clear block—

they can come up and stop at this block one minute and proceed.

Q. But how long are those blocks?

A. Why they are, I would imagine, I don't know just what the distance is.

Q. These trains frequently follow each other every five minutes or even less than that?

A. Yes, they will go less than that if they can get in there by following up to the block, stopping and starting again.

Q. A passenger train leaving Union Station, a freight train might follow up along almost immediately, up to the first block and the passenger train would probably be out of the way so they could keep moving right along. If he can get out of that block and down to the next one, his block would be clear and let him follow.

151 Q. So it is practicable to run trains on, as the street car men say, five minutes headway?

A. Yes.

By Mr. Kellogg: The Missouri Pacific runs no trains over your tracks except as shown on that time table, do they?

A. With the exception that they might run an extra.

Q. Well, they do not run many extras, do they?

A. Well, I am not prepared to say as to that, that would be shown on the train sheet.

Q. Well, they do not run freight trains between South Omaha and the bridge, do they? A. No sir.

Q. They only run passenger trains?

A. Passenger trains from the Union Station to Gilmore Junction and through the lower end of their yards.

Q. But they run no freight trains over your tracks, do they?

A. Freight trains from South Omaha to Gilmore Junction?

Q. I mean between South Omaha and the bridge?

A. No sir.

Q. Their freight trains run from Gilmore Junction to South Omaha? A. Yes sir.

Q. Where they connect with the Union Stock Yards tracks?

A. Yes sir.

Q. Now they take all deliveries of their stock direct to the Union Stock Yards the same as the Rock Island?

A. Yes sir.

Q. Without any intermediate switching by the Union
152 Pacific? A. Yes sir.

Q. And the same to all industries situated on the Union Stock Yards tracks? A. Yes sir.

Q. Now the C. B. & Q. does not have any trains between South Omaha and the bridge over your lines?

A. They have their own track.

Q. They run certain trains between South Omaha and Gilmore? A. Yes sir.

Q. What trains?

A. Passenger, freight and switch trains.

Q. They are all operated in the same manner as these other roads? A. Yes sir.

Q. They make direct deliveries and receive direct deliveries from the Union Stock Yards the same way as the others?

A. Yes sir.

Q. Now the Illinois Central does not use any of your tracks between Council Bluffs and South Omaha except for delivering passenger trains through your north town yards to the Union station?

A. Yes, through from 16th street up to our depot, in through there?

Q. They use none of your tracks between Council Bluffs and South Omaha except for passenger trains, from about 16th street through to the depot?

A. 20th street to the depot, and the lower yard down to a connection by the water works.

153 Q. I am speaking of the main passenger tracks from Council Bluffs to South Omaha, they do not use those?

A. No sir.

Q. All of their stock trains and packing house trains and trains to industries on the Union Stock Yards go round by the O. B. & T. line?

A. I believe they do, yes sir.

Q. The Wabash Co. uses no tracks between your Union Station and South Omaha? A. No sir.

Q. They use simply your tracks from Council Bluffs to the Union station for the delivery of passenger trains?

A. That is all.

Re-direct,

By Mr. Rich:

Q. You say the Milwaukee stores stock cars on the Union Pacific track near the Summit? A. Yes sir.

Q. That is a track set apart especially for that purpose, is it not, for the storage of cars?

A. Well, I don't know whether the tracks are set aside for that purpose, they are used for that purpose.

Q. Do you know of the Rock Island at South Omaha making any deliveries direct to the Missouri Pacific during the time you have been with the Union Pacific at Omaha?

A. I do not.

Q. In answer to a question of Mr. Kellogg's you answered that all of the local freight received from the Milwaukee, Northwestern or Rock Island, was delivered through the Union Pa-

154 cific freight house at Omaha, you meant, did you not, all freight outside of full car loads or part car loads that are for delivery to some local industry?

A. Yes, sir, the local industries would be placed on their tracks.

Q. When the Rock Island delivers cars to the Union Pacific to 6th street, just state how it is done?

A. They will pull down to the east end and cut off their set-outs, pull on to the bridge and then back into our yard with them.

Q. And then couple up on to the train they cut off and pull out for Council Bluffs? A. Yes sir.

Q. I want to direct your attention to the attempt of the Great Western to make a direct delivery to the Rock Island and the attempt on the part of the Rock Island to make a direct delivery to the grain terminals of the Great Western as called out by Mr. Kellogg on his cross examination. During the time you have been with the Union Pacific did you ever know of any other instance, than the one you told about when the Great Western attempted to make a direct connection or delivery on to the Rock Island tracks?

A. This was the first one that I have known of.

Q. During the time you have been with the Union Pacific did you ever know of the Rock Island attempting to make any other direct delivery to the Great Western or to the Great Western grain terminals than the one Mr. Kellogg called out from you?

A. That is the only one I have heard of.

By Mr. Stickney: Q. If I recollect your testimony, you testified that say a car load of grain being brought in from 155 Iowa into Council Bluffs on the Milwaukee road destined for the Independent Elevator would be delivered by the Milwaukee road to you at 20th street yards, is that right?

A. No, sir, it would be delivered to the Chicago Great Western at Council Bluffs.

Q. Well, what freight is delivered to you at 20th street from the east?

A. For industries located on our tracks, for our freight house and for the lower yard connections.

Q. Well, isn't there anything delivered there for the Great Western road?

A. From the tenant lines?

Q. Yes. A. No, sir.

By Mr. Kellogg: Q. My question to you was that car load freight received over the Rock Island, Northwestern and Milwaukee roads to be delivered in Omaha either on your team tracks or your freight house would be delivered at 20th street?

A. Yes, sir.

Q. And all other freight to be delivered to industries on the Union Pacific tracks would be delivered at the same place?

A. All industries on the Union Pacific would be delivered at 20th street.

Q. That is, all freight coming off the Rock Island, North-Western or the Milwaukee, delivered at 20th street would be freight either destined to your freight house or team tracks or to industries on your tracks in Omaha for lower yard connections?

156 A. Well, that is off their line, yes sir.

Q. Well, these companies do not make connections with any other at the lower yards, do they?

A. Well, no, we make connections.—

Q. You do not make connection with the Northwestern at the lower yards?

A. The Chicago Great Western, M. & O., and Northwestern in Nebraska.

Q. The Northwestern has its own line to North Omaha, hasn't it? A. Yes, sir.

Q. And freight destined for delivery to their freight house isn't delivered to you at all is it? A. No, sir.

Q. Then all freight delivered to you at 20th street is for local delivery in Omaha, isn't it?

A. For local delivery in Omaha by the Union Pacific.

By Mr. Stickney: Q. How is the grain coming in off the Northwestern road that is going to the Independent elevator, how does it get there?

A. I believe that some of it is being delivered through the Stock Yards Co., at South Omaha, that to the Great Western on our tracks. We have had cases where it was delivered to us in the lower yard and we delivered to you at 20th street.

Q. That isn't hauled from Council Bluffs and then hauled back? A. No, sir.

Q. That isn't hauled to Council Bluffs and delivered to the Great Western over there?

A. No, we don't take it to Council Bluffs and deliver it, we deliver it to our nearest connection with you.

157 Q. No, but as I understood you, grain coming in on the Rock Island was hauled across to Council Bluffs and delivered in Council Bluffs to the Great Western and the Great Western hauled it back.

A. That is my understanding. Suppose you only had three cars of grain in the train, I suppose they would take it to Council Bluffs.

Q. Well, suppose they had forty car loads of grain?

A. I don't know what the yard master would do with that.

Q. Well, the other is a supposition on your part, isn't it?

A. Supposition, yes. I don't know that they have a break-up yard or a place to set out cars even at Albright.

Q. Well, the testimony that you gave that grain was taken to Council Bluffs and delivered to the Great Western and hauled back, is all supposition on your part, you don't know whether it is done or not? A. I never seen the way bills.

By Mr. Kellogg: Q. You don't know how Northwestern grain would be delivered then to the Great Western grain terminals Independent Elevator from Nebraska points?

A. From the west I understand it has been delivered, as I said before, through the Stock Yards on to our track.

By Mr. Stickney: Q. Well, it can't get there without going over your tracks, can it?

A. It can't get there without occupying one of our tracks at South Omaha.

158 Q. Well, it can't get to the Great Western terminal elevator now without being hauled over your tracks somehow, can it? A. To the Independent Elevator?

Q. Yes.

A. We have it come, some through the lower yard.

Q. Well, it can't get there anyway without going over your tracks some way? A. Over our main line?

Q. Yes. A. Yes, sir.

Q. How?

A. Come from the lower yard to your 20th street delivery there and you go from 20th street to your elevator.

Q. Well, we can't get at the elevator now without getting on the main track, anyway?

A. You can go up to the elevator without getting on the main tracks out of your freight house.

Q. Not unless the connection has been put in since I was over it some days ago, there was an agreement for a track there but the—

A. The track has been operated there now and has been—I think they could get in from 20th street to the elevator ever since I have been here.

By Mr. Rich: Q. Does any other road than the Chicago and Great Western or the Northwestern, make deliveries to the Union Pacific of freight to 20th street? A. The Rock Island.

Q. I thought the Rock Island made its deliveries at 6th street.

159 A. Going which way?

Q. Well, either direction.

A. The Rock Island east bound and all the other four lines

west bound at 20th street, Rock Island at 6th street west bound.

Q. But those four are the only roads that make deliveries at 20th street? A. West bound.

Q. The delivery of the Missouri Pacific in the north yards with the delivery track between the Union Pacific and Burlington is down at Douglas street?

A. Yes sir.

Q. And there is no other point of delivery in Omaha than the 6th, 20th, Davenport or Douglas street points of delivery.

A. And the M. & O. and the O. B. & T. down outside of our shop gates there on the north.

By Mr. Kellogg: Well, there is no other company has a right over your tracks to get to 20th street is there, except those four.

A. That is all.

Q. The other companies have other connections in other places? A. Yes sir.

Witness Excused.

160 Charles Ware, of lawful age, being first duly examined, cautioned and solemnly sworn, a witness produced for the defendant, testified as follows:

Examined in Chief,

By Mr. Rich:

Q. What position do you hold at the present time?

A. Superintendent of the Nebraska Division, U. P. R. R.

Q. How long have you held this position?

A. A little more than a year.

Q. How long have you been with the U. P. road?

A. Since 1890.

Q. What position did you hold before the present one?

A. Train dispatcher, assistant superintendent.

Q. How long have you been located at Omaha?

A. Sixteen years with the exception of three years.

Q. Mr. Ware, you may describe the method in the handling of a car or cars that would be necessary in case a direct exchange was made between freight coming from the west to be delivered direct to the Independent Elevator from the Rock Island?

A. A Rock Island train from the West making a direct delivery to the Independent Elevator on the Great Western tracks, would move East on the east bound main line, cross the west bound main line on a curve on a grade of about 66 ft. to the mile and enter the Chicago Great Western tracks.

Q. In making that statement, you are assuming that the

supposed connection with the grain terminals would be made at F Street?

A. South Omaha, yes sir.

161 Q. Go on and state?

A. If the train continues east from the Great Western tracks, it would cross the west bound main line again on a curve and on a steep grade at Twentieth street and enter the east bound main line.

Q. If it backed out of the elevator terminals?

A. If it backed out of the elevator terminals at the west end it would back out of course, over the west bound main line at the same point that it entered until it got on the east bound main line, where it would then, of course proceed likely to Council Bluffs. In crossing the west bound main line, this train, of course, would be moving against the current of traffic, which in my opinion would be dangerous, and in addition to delaying west bound trains, it would of course delay trains that were crossing it on the east bound track.

Q. Now describe the course of delivery by tenant lines, to-wit: Northwestern, Milwaukee or Rock Island, with grain shipments from the East destined for the Independent Elevator, provided the interchange was direct?

A. If the interchange was direct from the Milwaukee, Rock Island or Northwestern to the Great Western, they would pass over the tracks at Twentieth street which is a very busy piece of track, and a number of trains would be making deliveries that could be made by one train, in other words, the business would be concentrated probably into one train, if the deliveries were made through the U. P.

By Mr. Stickney: Q. He asked you to describe how would it be done if it was done direct.

162 By Mr. Rich: He says it would be done at Twentieth street by the three roads.

A. The three roads would stop at Twentieth Street and make the deliveries direct to the Great Western, while the U. P. delivered the Great Western the business would be concentrated and a less number of trains—

By Mr. Stickney: Q. How would it be concentrated in the Union Pacific?

A. If it be set out on tracks east of Twentieth Street by the other lines and if it were delivered to the Union Pacific—

Q. Well, it would be delivered by the numerous lines to the Union Pacific instead of the Great Western, that would be all wouldn't it, and when the numerous lines had delivered to the Great Western, that would be the end of it, and when the

numerous lines had delivered to the Union Pacific then the Union Pacific would have to handle it?

A. It would depend somewhat on what tracks the Chicago, Great Western accepted that business. If the business was accepted on some track east of Twentieth Street it would not interfere with traffic as much as if the business was delivered to the Chicago Great Western at a point west of Twentieth Street. Trains are continually using this switch across—

Q. There is more traffic east of Twentieth street than there is west?

A. There are more tracks east than west too. You understand that in Omaha yards the tracks are very congested and we are short of track, and where we have got more track that is the place where we would like to handle the business.

163 By Mr. Rich: Q. You may state in a general way the condition of the traffic at the present time and under the custom that prevails at the present time with reference to interchange of cars between tenant lines as between Omaha and South Omaha with respect to the number of trains and how many of that number are regular trains within a period of twenty-four hours?

A. There are forty-six regular trains shown on the bridge district card for twenty-four hours. This represents a very small number of the trains that actually use our tracks. Our records show that during twenty-four hours as many as 228 trains have passed over the tracks between Omaha and South Omaha; it is not an unusual thing for passenger trains of the Union Pacific and tenant lines to be delayed as much as one hour in the short space of four miles between Omaha and South Omaha on account of the density of traffic, freight trains in the way. We have received a great many complaints from the tenant lines and especially the Chicago, Great Western, relative to delays to their trains. In order to eliminate delays as much as possible we have recently employed bridge dispatchers whose duty it is to regulate the movement of all trains between the west end of the Missouri River bridge and Gilmore.

Q. Under the custom that has prevailed, Mr. Ware, in your time, as between the Union Pacific and the tenant lines in the case of a shipment of grain from the west over the Rock Island destined for the Independent Elevators, where should delivery of that grain be made to the Union Pacific, if it should be made to the Union Pacific at all?

164 A. According to the custom I think that that grain has been delivered at Council Bluffs to the Chicago Great Western, but it could be delivered to the Union Pacific at Sixth Street at Omaha and the Union Pacific could switch it to the Chicago, Great Western at Twentieth street.

Q. For how many years, Mr. Ware, have your duties been

of such a character that you were made familiar with the manner of the interchange of freight in less than carload lots and carload lots of freight as between the Union Pacific and the tenant lines or as between tenant lines themselves?

A. Since 1900.

Q. Since that time has any tenant line of the Union Pacific, meaning the Chicago, Great Western, the Milwaukee, the Northwestern or the Rock Island ever attempted as between themselves at Omaha or South Omaha or at any other points where there was a connection with the Union Pacific railroad, to make direct delivery to each other?

A. No, sir, not until along in April, I think it was, the Great Western attempted to take direct delivery from the Rock Island and the Rock Island attempted to take a direct delivery from the Great Western.

Q. In your experience do you know of any other attempts to make that connection? A. No sir.

Q. Mr. Ware, do you know of your own knowledge when the contract or agreement was entered into if there is one, or when the custom began, of tenant roads and other roads running into South Omaha making deliveries to the Stockyards Company on the stockyards tracks of all freight destined
165 for the stockyards packing house or any industry located on the stock yards ground or tracks?

A. I don't know when the contract was made, but as long as I can remember it has been customary there to make the delivery.

Q. How many years back would that run?

A. Well, I should think ten years, possibly more.

Q. Have any of the tenant roads, to your knowledge, ever attempted to make delivery direct of carload lots of freight to industries located on Union Pacific tracks in the city of Omaha?

A. No sir.

Q. So far back as your recollection goes, have any of the tenant lines ever attempted to use the connection at Twentieth street with the track that leads to the lower yards?

A. No sir.

Cross Examination,

By Mr. Kellogg:

Q. You say since 1900 none of the four roads mentioned have attempted to make deliveries to each other in Omaha until April, 1906, when the Rock Island and the Great Western undertook to do it? A. Not to my knowledge.

Q. Well, now, the Rock Island Company delivers its own freight between Council Bluffs to its own connections at Albright, doesn't it? A. I presume it does.

Q. It runs all its trains over those tracks and makes connection between its connection at Council Bluffs and its con-

nection at South Omaha? A. Yes.

166 Q. It has no occasion to deliver any freight west bound to the Milwaukee Company, has it, at Omaha?

A. No sir.

Q. And the Milwaukee has no line west of Omaha?

A. No sir.

Q. It has no occasion to deliver any freight at South Omaha to the Northwestern, has it, because it connects with the Northwestern at Council Bluffs at the pool yards? A. Yes sir.

Q. And that is the most convenient place to take it?

A. Yes sir.

Q. The Northwestern has had no connection at South Omaha until recent years, has it?

A. Well, the F. E. & M. V. had, of course, for a number of years, it is now the Northwestern.

Q. But the Northwestern from the East never had until sometime about 1904, had it?

A. I don't know just when they entered South Omaha, but it has been several years.

Q. The Rock Island would have no occasion, as you said, to deliver to the Northwestern there, because it had a convenient connection at Council Bluffs in the pool yards?

A. The Rock Island might want to deliver to the Northwestern from some point on the F. E. & M. V.

Q. It could deliver that just as well at Council Bluffs, couldn't it? A. It could make the delivery either place.

Q. Well, Council Bluffs is the convenient place, isn't it?

167 A. The Northwestern makes connection at South Omaha through the Union Stockyards, I believe.

Q. Well, they also have a direct connection with the Union Pacific at South Omaha?

A. You mean the F. E. & M. V.?

Q. No, that is the Northwestern now?

A. Oh, up at Summit, yes sir.

Q. Now then, anything that the Rock Island brought to Council Bluffs to be delivered to the Northwestern, would more naturally be delivered in the pool yard at Council Bluffs wouldn't it?

A. Well, I can't say as to that; the Northwestern from the west enters South Omaha and it might be more convenient for the Rock Island to deliver this stuff at the Stockyards to the Northwestern rather than to deliver it at Council Bluffs, I don't know.

Q. Well, you know the Rock Island, Milwaukee and Northwestern all enter these pool yards at Council Bluffs?

A. Yes sir.

Q. And that is the most natural and convenient place for them to make their deliveries? A. I can't say as to that.

Q. That is what they do, isn't it? A. Yes sir.

Q. Well, if the Northwestern had any freight to haul out on its F. E. & M. V. line it runs its trains over your tracks and makes connections at Summit, don't it?

A. It connects there, yes sir.

Q. Now, the Chicago & Northwestern wouldn't have any occasion to deliver freight to any of those other lines to go west unless it were the Rock Island, would it, at South Omaha?

A. The Northwestern might want to deliver to the 168 Rock Island at South Omaha.

Q. Well, it would be its natural and convenient place at Council Bluffs, wouldn't it?

A. It can deliver at both places, and as to which would be the most convenient, I am not qualified to say.

Q. Now, the Great Western did not come in until about August 1903, did it? A. Yes sir.

Q. When it entered under a decree of the United States Court? A. Yes sir.

Q. You knew about that suit? A. Yes sir.

Q. And about the decree? A. Yes sir.

Q. You have been familiar with it? A. Yes sir.

Q. Now, you say if the Rock Island should wish to deliver grain on to the Great Western Grain terminals at South Omaha, it would enter onto the Great Western tracks at what point? A. At about F street.

Q. Will you please look at the map Exhibit 1; I presume if the Rock Island were to deliver grain to the Great Western Terminal it would enter on the Great Western tracks at the connection between the red track and the Union Pacific tracks at or near G street, wouldn't it, about F street or G street, would it not? A. Yes sir.

169 Q. Now the only use the Rock Island would make of your tracks to make that delivery would be between its connections at Albright and the Great Western connection before mentioned? A. Yes sir.

Q. Which is a distance of a mile and a quarter, isn't it?

A. Yes sir.

Q. And Mr. Crawford stated, I think, that most of that way it wouldn't need to run over your main track?

A. It would run on our eastbound main track from Q street, South Omaha, south of South Omaha, to a point where the Great Western connects with the west bound main line.

Q. Now, your plan is not to run your through passenger trains over that line, isn't it, your through passenger trains to the west will turn off at about the Grain Terminals, won't they, near the Summit? A. I don't know.

Q. Well, you are building a main line track up there, aren't you? A. I don't know.

Q. Don't you know that the Union Pacific is building a double track road from the Great Western terminal west to its connection with its track about eleven miles?

A. That is the report that is in circulation.

Q. Well, you understood that they were?

A. I have heard that they were.

Q. And that that is to be their main line to the west?

A. I have heard so.

Q. So if it is your main passenger trains would run over that main line to Albright, would they?

170 A. I think we would have to have some trains over that track just the same.

Q. Well, I mean your main trains?

A. I think the traffic would have to be divided up some way.

Q. Now you say that the Rock Island would have to use your main line track to make that delivery to the Great Western terminal from Q street to Albright? A. Yes sir.

Q. That is all the main line track that you would have to use? A. Yes sir.

Q. And they would have to haul it over your main track a distance of over four miles and deliver it to you there?

A. Yes sir.

Q. And then deliver it to you at Sixth Street?

A. Yes sir.

Q. Then their engine would have to return to Albright where their yard is?

A. Not necessarily, it might be going to Council Bluffs.

Q. Well, if it were not going to Council Bluffs, it would have to return? A. Yes sir.

Q. Then you would take an engine at Sixth street and deliver the grain to what place? A. Twentieth street.

Q. That is, you would deliver the grain to the Great Western Grain Terminals at Twentieth Street? A. Yes sir.

Q. To do that you would have to use the connections with the terminals at Twentieth Street and the main line track between Twentieth and Sixth Streets?

171 A. No sir.

Q. How would you use it without that?

A. We would use it only a very short distance.

Q. Well, how far?

A. Well, we would have to use it probably a couple of hundred feet.

Q. Whereabouts?

A. That would be from the freight yard there to Thirteenth street.

Q. From what freight yard?

A. From the Union Pacific freight yard opposite the Union Pacific station. We would not use the main line there necessarily we would use one of the side tracks down to Thirteenth street.

Q. Then from Thirteenth street to Twentieth street, what would you use? A. Side tracks.

Q. Now, at Twentieth Street when you switch it into the Great Western, would you switch it over a lead leading onto your main track?

A. No, sir, switch in on a side track.

Q. And then the Great Western would take it with its engine and haul it up to the Grain Terminals?

A. On a side track, yes sir.

Q. Now, to get from the Sixth Street yards, they are on the south side of your main track, are they not?

A. On the south side of the main line?

Q. Yes, sir.

172 A. The tracks at Sixth Street are between the main lines, the main lines are the extreme north and the extreme south tracks.

Q. But the main lines over which your passenger trains run and all the passenger trains of these companies are north of the Sixth street yards? A. Yes sir.

Q. So that your principal main line tracks from Council Bluffs to South Omaha are north of the Sixth street yards?

A. Yes sir.

Q. And in order to go from the Sixth Street Yards up to the Great Western Twentieth Street Yards, you have to cross your main tracks? A. Yes sir.

Q. As a matter of fact, don't you run nearly all the way up on those main tracks now?

A. Well, it depends on the traffic.

Q. But you do use the main track, don't you?

A. We use both the main tracks and the side tracks.

Q. The busiest part of your line is where?

A. It is all busy.

Q. Well, it certainly is as much occupied down toward Twentieth Street as it is down toward Albright, isn't it?

A. Albright is on a curve.

By Mr. Stickney: Q. Isn't Twentieth street on a curve too?

A. The view is not obstructed as bad as it is at Albright.

By Mr. Kellogg: Now isn't it a curve between the
173 Twentieth Street connection and the F. Street South Omaha, and nearly down to Q Street.

A. The view is obstructed there and it is on a steep grade, 66 feet to the mile.

Q. It is almost a straight line, isn't it?

A. There is not much straight track in there, no sir.

Q. Now you tell me it will use the Union Pacific tracks less to have the Rock Island Company haul that grain down to Sixth Street, you take it there with another engine and put it up to the Great Western and deliver it to the Great Western grain terminals than it will to have the Rock Island simply run it down on that half mile or three-quarters of a mile track?

A. I would prefer to see two or three Rock Island trains handle it at Sixth Street rather than to stop any train and cross our main line where it crosses the Chicago, Great Western.

Q. You have got to cross your main line in delivering that same stuff at Sixth Street? A. Yes sir.

Q. Now, is it any worse for you to cross your main line with a load of grain than for the Rock Island to do it?

A. It is not near as bad.

Q. Aren't all those trains under the direction of your yard-master?

A. One man cannot control those trains between Council Bluffs and Gilmore?

Q. Why?

A. Because it is not possible to control them.

Q. Then you don't agree with Mr. Crawford when he said they were run under his direction?

A. He didn't mean that he could control those trains; 174 those trains are run verbally by bridge dispatchers and yard men, there can't anybody prevent an accident with those trains.

Q. It is just as dangerous to cross your main track with your own engine as it is to cross it with some other?

A. It is if the Union Pacific would cross at irregular hours the same as other lines do.

Q. Do you mean by that, that grain destined to the Great Western will reach these Sixth Street yards three or four days before you deliver it? A. No sir.

Q. Now, then, you say the way it would be delivered as I understand, would be to take it clear over to Council Bluffs then the Rock Island haul it to Albright a distance of nearly ten miles from Council Bluffs, and deliver it to the Great Western then the Great Western haul it back and switch it in to the grain terminals?

A. I don't say it is necessary to do that.

Q. But it is your idea that it should be delivered to the Union Pacific at Sixth Street? A. Could be.

Q. So that you could get a two dollar switching charge?

A. I guess it is worth that.

Q. But you get a charge of two dollars on every car?

A. We get various prices, anywhere from two to five dollars a car.

Q. Now, did you state that the Great Western connections, at Council Bluffs, its grain terminal connections, at Council Bluffs, were on a curve, I mean at South Omaha.

A. Well, it might not be right on a curve but that
175 track is all curve down in there, pretty near.

[A.] Well, from F. street south for more than half a mile is a direct straight track, isn't it?

A. From F. street, south, yes sir.

Q. It is a very short space there, isn't it? A. Yes sir.

Q. The Rock Island coming in from the West would not be on a curve, would it? A. No—

Q. How would it be, the west bound passenger going west, when the Rock Island train would be crossing the west track?

A. Well, it would be—

Q. It would be no more dangerous than for your own engine crossing the main track, would it?

A. There would be more danger, for there would be more engines.

Q. Then your idea is not to use that western connection at all for anything?

A. It will be used enough when the Great Western enters our main line there on that grade.

Q. Very well, you concede the right of the Great Western to use that, don't you?

A. I presume they are going to use it, yes.

Q. That is what it is put in for, isn't it? A. Yes sir.

Q. Now, is it any more dangerous for a Rock Island engine to enter there with a car of grain than for a Great Western Engine to go out and get the Rock Island car, is it any more dangerous?

A. Suppose three or four lines—if you are going to ask about any two lines, I will say, no of course not.

176 Q. Now, you state that deliveries made to the Great Western grain terminals by lines from the east would occupy your tracks less if they were delivered by the Rock Island, the Milwaukee, and the Northwestern, to you at Twentieth street and then by you to the Great Western terminals with your switch engine? A. Yes sir.

Q. Now, every delivery that is made to Twentieth street by one of those Companies is a separate delivery, isn't it?

A. I don't understand—

Q. You say that the lines coming from the east, the Rock Island the Milwaukee and the Northwestern, in your opinion, should deliver freight destined to the Great Western grain terminal on your tracks at Twentieth street, is that correct?

A. Yes sir.

Q. Then that you should take it and deliver it to the Great Western freight terminal at Twentieth Street?

A. You understand that when you say at Twentieth street, to deliver it on our tracks; now there are various tracks at Twentieth Street, we cannot require these tenant lines to deliver those cars on tracks that would be convenient for the Union Pacific to handle them, the yard is so congested.

Q. Well, what track are you talking about when you say that those lines from the East should deliver grain on the Twentieth street yards?

A. Well, there are some half dozen tracks down there?

Q. Some one of those tracks? A. Yes sir.

177 Q. Each time any one of those companies brought in grain or delivered it then, it would be a separate service and run a separate engine, wouldn't it? A. Yes sir.

Q. Then you would take that grain from all those companies and switch it onto the Great Western Twentieth street yards? A. Yes sir.

Q. And they would take it with their engine and switch it up to the grain terminals? A. Yes sir.

Q. And you say that would be using your tracks less than it would for those companies instead of dropping the car at Twentieth street to have another service entirely deliver them direct to the Great Western? A. Yes, sir, I do.

Q. Why?

A. Because if those three lines were making deliveries direct to the Great Western they would deliver at irregular hours, they would cross that switch at Twentieth street which is necessary, at all times, and delay traffic, but if they set it on tracks that the U. P., wanted it set on we would have it set at places where it would not interfere with the business at Twentieth street.

Q. Whenever they deliver a car or cars to Twentieth street you have got to deliver that to the Great Western at Twentieth Street, haven't you? A. No sir.

Q. Why?

A. Because we would bunch that stuff together and make one delivery of it.

178 Q. Let it stand two or three days? A. No sir.

Q. Well, those four lines that come up, there have got to make a separate service on your main track into the Twentieth street yard? A. No sir.

Q. Well, what will they use, side tracks?

A. Well, they could use side tracks, but they would be blocking—you understand that there is a little narrow section there that the trains have to go through—

Q. You have to do it the same as they do, don't you?

A. Not necessarily.

Q. Well, now, for grain to come from Council Bluffs to the Twentieth street yards of the Great Western, it has to cross your main track, hasn't it, whether you haul it or they haul it? A. Cross our main track?

Q. Yes? A. Where?

Q. Well, I am asking you where? They use your main line just the same if they drop in into your Twentieth Street yard, wouldn't they?

A. Well, we could designate side tracks and take them off our main line.

Q. Well, you could do it if they—

A. I don't think we could direct their movement as well as we could—

Q. You say you can't regulate the delivery by them at the Twentieth street yards to the Great Western, the same as your own? A. No sir.

179 Q. Why can't you control them?

A. Because we have no right to say anything to them if they have a right to make the direct delivery to the Great Western,—

Q. Have you any more right to interfere with them there?

A. If they make delivery on our tracks we have a right to regulate that, if they have a right to make the delivery to the Great Western they have a right to use the tracks they please and make the delivery.

Q. Why couldn't they use side tracks?

A. We would use sidetracks to get on Twentieth street to keep off the main line.

Q. Why can't they do it then?

A. They haven't any right on there.

Q. Then they haven't any right on the side tracks to deliver to your Twentieth street yards, have they?

A. If they made the delivery to us we would probably give them the right to use it.

Q. You mean if you wanted to give them additional right between the Bridge and Twentieth street, you could do it?

A. It could be arranged, yes.

Q. Provided you could hold on to the switching and not let them deliver to the Great Western?

A. In other words, we would not want to hold the sack.

Q. You want to collect a switching charge on every car of grain that comes across your track?

A. We do so long as we maintain a yard at Omaha.

Q. Now, will you tell me why wouldn't the Northwestern, Milwaukee and Rock Island use the same tracks between Council Bluffs and Twentieth Street to deliver to your yards
180 as they would to deliver to our yards?

A. Because the contract does not give them a right to use those tracks.

Q. Then you are giving your testimony as a matter of law, are you?

A. They are not using these tracks or they would have used them fifteen years ago, I guess.

Q. If they deliver to your Twentieth street yards they use your track, don't they? A. They use our main line.

Q. They use your main line to deliver into your Twentieth street yards? A. Yes sir.

Q. Whether that grain is going to us or who? A. Yes sir.

Q. They would use the same line if they were going to deliver to us, wouldn't they? A. If the foreign lines—

Q. Now, answer that question?

A. I don't know whether I can or not, no, they wouldn't.

Q. Why not?

A. Because if they were going to make deliveries to the Great Western they would deliver direct to the Great Western and would use our main lines; if they were going to make their delivery to the Union Pacific, the Union Pacific would provide side tracks for them to put their grain on and keep them off the U. P. Main line.

Q. I asked you if they were going to deliver cars of grain from Council Bluffs to your Twentieth street yards, if they would use your main line from Council Bluffs to Twentieth Street, you said, yes, didn't you?

A. I didn't understand the question.

Q. Well, is that your answer now?

A. No, they would not use the same tracks to deliver to us at Twentieth street as they would to deliver to the Great Western.

Q. If the Northwestern or the Rock Island or the Milwaukee were going to deliver cars of grain into your Twentieth street yards what tracks would they use between Council Bluffs and Twentieth?

A. If they were going to make delivery to us at Twentieth street they would use our main lines from Council Bluffs to about Thirteenth street and would take the side tracks down to Twentieth street.

Q. Well, now, will you come here and show me the connection at Thirteenth street? Now, as a matter of fact, Mr. Ware, don't you switch right over your main track every time you deliver any grain to your Twentieth street yards?

A. In our Twentieth street yards, no sir, we don't touch the main line at all.

Q. Well, then, why couldn't these other Companies do the same?

A. The Northwestern would stand on our main line while they were making deliveries to the Chicago & Great Western.

Q. If you can use the main track to deliver grain to your Twentieth Street yards, why can't they?

A. You understand that when these trains are going west with these cars that that is not the end of their run; they do not get off of our main line and go over in there and set out cars.

182 Q. Now, in delivering cars to the Twentieth street yard, in our Twentieth street yard, don't your engines actually run up on your main line and use it to make the connection? A. They could do it.

Q. Don't they actually do it?

A. They do do it, and they also don't do it, they do both ways, it all depends—

Q. If you can take grain from the east and deliver it into our Twentieth street yards without using your main line, then some other Companies can do it if you will let them, can't they?

A. If the tracks are clear enough of cars.

Q. You couldn't do it unless the tracks are kept clear enough of cars?

A. We would make the tracks clear enough of cars.

Q. Well, you could make the tracks clear enough for them, couldn't you? A. Not necessarily.

Q. You say, Mr. Ware, that you knew about this decree about the time they entered in August, 1903?

A. I understood that they had been given permission to use our tracks.

Q. And you knew in connection with that that there was an injunction against your Company to prevent their interfering with our use of your tracks, didn't you?

A. Well, I didn't have a great deal to do with that, about the only notice I had was that we would permit the Great Western to use our tracks the way the other lines did.

Q. You knew that was under a decree of court?

183 A. I understood so.

Q. Well, did you give directions to Mr. Crawford your yardmaster to prevent the Great Western making connections with the Rock Island at Albright?

By Mr. Rich: Objected to as improper cross examination.

A. Yes, sir.

Q. Did you also give directions to him to prevent the use by the Rock Island of the connections of the Great Western Twentieth Street Yards and the Omaha terminals?

A. Yes, sir.

Q. Substantially as Mr. Crawford testified?

A. Yes, sir.

Q. Did you receive orders from Mr. Mohler to do that?

A. No, sir.

Q. Did you talk with Mr. Mohler about it?

A. No, sir.

Q. Did you ever talk with him about it?

A. Not that I remember of.

Q. Did you do it on your own responsibility without talking to anybody?

By Mr. Rich: Objected to all the way through, as improper cross examination.

A. No, sir.

Q. Did you ever talk with any U. P. Official about it?

A. Yes, sir.

Q. Who? A. The general superintendent.

Q. What is his name? A. Mr. W. L. Park.

184 Q. Did he give you directions? A. Yes, sir.

Q. The same directions that you gave to the yard-master? A. Yes, sir.

Q. Do you know whether he talked to Mr. Mohler?

A. I do not.

Q. What is Mr. Park's headquarters?

A. U. P. Headquarters, at Omaha.

By Mr. Stickney: Q. I understood him to swear that that connection near G or F. street was on a steep grade.

A. My answer did not mean that at that particular spot it was 66 feet, it is my understanding it is about a 66 ft. grade right in here.

Q. Well, that has nothing to do with this connection if it is 66 foot grade somewhere else?

A. Well, it is very close to it.

Q. Well, you don't want to make a record here that is incorrect?

A. I want to say that my understanding is that near this point here it is a 66 foot grade.

Q. Well, now, I will tell you what the fact is, that the 66 foot grade ends about here and from that point it is almost a level.

A. There is 2000 feet here, as I understand, that is at a grade of 66 feet.

The further examination of witnesses was here adjourned to 10 o'clock A. M., Thursday, June 7th, 1906.

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Omaha, Neb., Thursday, June 7, 1906.

Parties met pursuant to adjournment, represented by respective counsel, and the following proceedings were had:

Charles Ware, cross examined by Mr. Kellogg, testified as follows:

Q. I show you a map of block signals and a letter from E.

W. Colt, Superintendent or Supervisor of signals, which may be marked Exhibit 3. This purports to be a map of the block signals between Council Bluffs and Gilmore, together with a letter explanatory thereof. A. Yes, sir.

Mr. Kellogg: And is it stipulated they may be received in evidence, the letter explaining it, with the same force and effect as though Mr. Ware testified to it?

Mr. Rich: Yes, sir.

Mr. Kellogg: We offer this in evidence as a part of the cross examination. Said papers, being marked each exhibit 3, map and letter, are hereto attached, or true copies thereof, and made a part of this record.

Qs. by Mr. Stickney. Are these automatic blocks?

A. Here?

Q. Yes.

A. Yes, sir, those are electric blocks.

Q. Now explain how they work.

A. A train approaching those blocks, finding the position of the blade at "stop" is required by rules to stop one
186 minute and then proceed.

Q. Immediately they pass by the block, what happens to the block, if the block is clear when they approach it; immediately they pass by the block what happens?

A. The block goes to stop position after the train passes.

Q. It goes to danger, however, automatically?

A. Yes, sir.

Q. And remains at danger until the train passes off of that block on to the next block? A. That is right, yes sir.

Questions by Mr. Kellogg: I also show you sheet No. 1 and sheet No. 2, which may be marked exhibit No. 4; what do those two sheets together show?

A. I do not know; those sheets were made by the bridge dispatcher of the bridge district of the Union Pacific at Omaha.

Q. Who is he? A. His name is J. D. Clancy.

Q. Situated in the general offices?

A. He is situated in the tower at 13th street, Omaha yard.

Q. Well, you do not know what they purport to show?

A. As I understand from that sheet, it shows movements of trains between Omaha and Summit Junction.

By Mr. Stickney: What point is Omaha? Omaha Station? Union Passenger station?

A. I don't know whether that includes these trains from 6th street, or from 13th street or not. It says on the sheet there Omaha; that is all I know about it.

187 Q. You do not know what point "Omaha" means?

A. I do not know what point in Omaha, no.

By Mr. Kellogg: Will you have prepared, sheets like these showing the movement of trains for the entire month of May, 1906, between Omaha and Summit Junction,—

By Mr. Stickney: "Omaha" don't mean anything; Summit Junction is not Omaha.

By Mr. Kellogg: I am going to explain that; (question continued)—stating what the word Omaha means as a place of commencement whether it is the Union Station, or what place it does mean; and Summit Junction, where that is located; also like schedules showing the movement of trains from Council Bluffs across the bridge each way, each twenty-four hours, to the Union Pacific Union Station?

A. Providing counsel for the Union Pacific says so, yes sir.

Mr. Rich: Yes.

Q. Well, then you understand what it is to be prepared?

A. Yes sir.

Q. How long will it take?

A. Do I understand you that it is the information for the month of May?

Q. Yes sir, for the month of May? A. Yes sir.

Q. This statement is for seven days of May? A. Yes.

Q. When can you have it?

A. Oh, it will take probably a week.

188 Mr. Kellogg: Well, then, when Mr. Ware brings that, we can examine him on it.

Q. Will you please look at map, exhibit No. 5, and state whether or not the map correctly shows the location of your main tracks, dotted in red.

A. I am not prepared to say that this map is correct, but the two main lines appear to me to be on there correctly.

Q. Does it substantially show the location of the 20th street yard of the Union Pacific, which we have been talking about?

A. I cannot say that it is correct, but there are a number of tracks there that are familiar to me.

Q. Well, I asked you if it substantially shows the location; this of course is subject to correction, if your engineer finds it does not? A. Why I think—I think, yes.

Q. It does show the switches and lead off your main tracks into the 20th street yard, and into the Great Western 20th street terminal, does it not, at the west end of the 20th street yard? A. Yes sir.

Q. A carload and engine coming from the east on your main tracks would use the same switches and lead to switch them into the 20th street yards as it would to switch them into the Great Western 20th street terminal, would it not? A. Yes sir.

Q. Now, I wish to know, not how they would do, but exactly how they have done in switching the cars into the 20th street yard; is it not a fact that any railroad company, including the Rock Island, Milwaukee, or Northwestern wishing to deliver cars into your 20th street yard have brought those cars to the main tracks, marked red, to the west end of the 20th street yard, and switched them in from that end?

A. All lines that you refer to, except the Union Pacific.

Q. That is, the Rock Island, the Milwaukee and the Northwestern have always switched their cars in that way?

A. Yes sir.

Q. Now in doing that, they would use the identically same switches that they would if they pushed them right into Great Western 20th street yard, instead of pushing them into the U. P. 20th St. yard, would they not? I mean the switches on your main track? A. Yes sir.

Q. So that every time the Northwestern, the Rock Island, or the Milwaukee bring any cars destined to the Great Western 20th street yard or grain terminal, and switches them into your 20th street yard they use your main tracks to the same extent and in the same manner that they would if they switched them directly into the Great Western 20th street yard? That is what they have done, I mean in the past?

A. You are talking about what they would do.

Q. No, sir, what they have done.

A. What they have done?

Q. Yes sir.

A. They have not delivered any cars to the Great Western in any such manner.

Q. Well, if they would deliver any cars, that is the way they would do it, isn't it?

A. Well, you are talking about something now that might be done; I thought you wanted to know about the present practice; I can tell you about the present practice.

Q. The present practice is, in delivering cars into your 20th street yard, is to deliver them, as already said, into the west end, isn't it, by those companies? A. Yes sir.

Q. So that if those cars were destined to the Great Western, they would use the identically same switches and lead on on your main track, to switch them into the Great Western as they now use to switch them into your 20th street yard?

A. You mean they can do that?

Q. Yes; couldn't do that any other way, could they?

A. They could do that, yes.

By Mr. Stickney: They could not do any other way, could they? A. They have not done any other way.

Q. Could they do any other way without reorganizing their tracks? Could they get them into the 20th street yard of yours, or ours without using the same switches at that point?

A. There are tracks there so that they can make the entire movement down through here without touching our main line at all.

Q. Across where? A. At 13th street.

Q. Are not trains required to come up and use your main track and switch then into the 20th street yards from the other end, are they not?

A. That has been the practice on the main line.

Q. So that unless you change your practice and system of switching on to your 20th street yard, the companies I
191 have named would use the same switches on your main track at the west end of the 20th street yards to switch into the Great Western as they would to switch into this 20th street yard of yours?

A. We cannot change the present practice on account of irregular deliveries by those trains.

(Last question read by stenographer).

A. As I understand, what you want to get at is, under our present practice they would follow down here and back in through this switch here, and lead off into the other tracks here, just the same as they would back into these tracks here. (Referring to map)

Q. Yes sir. (Question read) "So that unless you change your practice, and system of switching on to your 20th street yard, the companies I have named would use the same switches on your main track at the west end of the 20th street yards to switch into the Great Western as they would to switch into this 20th street yard of yours?" A. Yes sir.

Q. So that if the present practice continues, then it would not relieve your main tracks at all to have the companies I have named deliver the cars first on to the Union Pacific 20th street yards, and then have you take them out and deliver them on to the Great Western Yards?

A. Yes, sir, there would be a great deal of difference in the movement.

Q. Well, why?

A. The Rock Island and the Milwaukee and the
192 Northwestern making deliveries in that manner stop and block our west bound main line while they are switching into the Great Western. It would be necessary to

switch up a grade there on that bridge where there is a D rail, where at the present time they were switching about on level. Under the present arrangement the movement can be made much quicker; the cars are kicked in and are handled by a switch engine over a side-track to make a delivery, and to handle that switch engine on a side track to make a delivery to the Great Western, one delivery by the switch engine would answer the purpose of half a dozen or more deliveries by the foreign lines.

Q. Well, now, Mr. Ware, you are talking about when you take them out of the 20th Street yard and put them into the Great Western, aren't you? A. Yes sir.

Q. I am talking about when the Rock Island, Northwestern, and Milwaukee bring them up to the west end of your yard and put them into your 20th street yard.

A. I thought you were talking about the Rock Island and Northwestern and Milwaukee delivering into the Great Western yards.

Q. Now, sir, when the Northwestern, Milwaukee and Rock Island now deliver any cars into your 20th street yard, you say they bring them up on the main tracks, colored red, and switch them into your 20th street yard on the west end?

A. Yes sir, that is right.

Q. Very well, if now instead of switching them into the 20th street yards of the Union Pacific, they switch them directly into the Great Western; they would use their main tracks exactly the same, and use the same switches wouldn't they?

193 A. They would use the same tracks and same switches, but they would be longer doing the work, as I have just stated.

Q. The only difference in the length of time doing the work would be in switching from the connection with the Great Western tracks in far enough simply to get the cars on to our tracks, isn't it—a few hundred feet?

A. The distance would not be very great, but you understand there would be a steep grade there, and the D rail to pass over.

Q. It would not take any longer to switch those cars into the Great Western tracks than it takes to switch them on to your tracks, would it?

A. I should say three times as long, in my judgment.

Q. But they would use the same tracks of yours, the same main tracks and the same switches and the same distance?

A. No, the distance would be greater, the distance on the Great Western.

Q. Same distance on the main track?

By Mr. Stickney: No the same distance from the switch here.

A. A car delivered by those lines to the Great Western would have to be shoved in on the Great Western tracks beyond the D rail; that would consume considerable more time than just to kick them into clear on these tracks here, and go ahead about their business. While this Rock Island train, for instance was making delivery to the Great Western up beyond this D rail, their train would stand on the west bound main line of the Union Pacific.

Q. It would not stand there any more—they do not break up their trains on your main track, do they?

194 A. They set cars out from our main track.

Q. They do not do it any more in switching on to our yards than they do in switching on to yours, do they?

A. Yes sir, they would in this case.

Q. Why?

A. To make a direct delivery, as I told you, they would have to go up in here, beyond this D rail with their car; it is up a steep grade, over that bridge there, which is certainly farther than it would be to kick into clear, right here.

Q. The distance is 100 feet more is it?

A. I have not measured it.

Q. About 100 feet, we will say.

Q. Measure it and see whether it is 100 feet more to go over the D rail on to our yards than it is to go into your yards. You have it exact on that map.

A. I don't see any D rail on that map.

Q. Is it 100 feet more?

A. I would think it was farther.

Q. Do you know whether it is or not?

A. If it was not any farther that wouldn't cut much figure.

Q. Then you say it takes a good deal longer to run the train on our tracks the same distance than it does to run on your tracks the same distance?

A. It does, because our tracks are about on a level and yours on a grade.

Q. How high a grade? A. I do not know.

Q. Is it not a down grade on to our tracks?

A. It is an up grade from our tracks to yours, and for that reason the D rail is put in.

195 Q. How steep a grade? A. I do not know.

Q. Couldn't they handle any cars that they shoved in there? A. It depends a good deal on the engine.

Q. As a matter of fact, when the Rock Island brings cars over here to be delivered over to your 20th street yard, or to our 20th street yard, they are not in the full train; they are broken up on your main track, are they?

A. Yes sir, they are in a full train, ordinarily.

Q. Do they leave their full train standing on your main

track at 20th street, and switch cars into your yards at 20th street?

A. Referring to full train, I am not prepared to say whether they have a full train or not, but still switch cars into our tracks. At 20th street they do leave cars on our west bound main line.

Q. They do? A. Yes sir.

Q. They wouldn't leave it any more than for them to switch it into your yard? A. Yes sir.

Q. Why? A. They would be longer.

Q. How much longer?

A. The difference, as I have stated before, is that in switching the Union Pacific would switch about on a level, and just kick cars into clear. If they make direct deliveries to the C. G. W., they would have to go in beyond that D rail up a steep grade to leave those cars.

196 Mr. Stickney: Would that take a minute or two minutes?

A. Well, in my opinion, it would take a great deal longer than two minutes.

Q. You don't know then, what distance?

A. The difference in the distance is not so material as the grade, and the D rail there, over which these cars have got to be placed.

Q. You do not know the grade, do you?

A. I do not know the exact grade, only I know it is steep.

Q. Which way, down or up?

A. It is steep when you are shoving from the 20th street up towards your freight depot up here.

Q. You do not know whether to shove up over onto our tracks would be up grade or down grade, do you?

A. Yes sir; I do.

Q. What is it? A. It would be an up grade.

Q. How much of a grade? A. I do not know.

Q. You don't know that? And you don't know the distance, nor the location of the D rail; but you think it would take longer to put it on to our tracks than on yours?

A. I have not measured the distance in there for years to ascertain the grade, but I have been there a great many times, and I know that it is a steep grade, and difficult to make deliveries there up that grade and over that D rail.

Q. Haven't you plenty of room in your 20th street yard to receive all cars for the Great Western grain terminals?

A. At times we have not.

197 Q. Then, that would interfere somewhat with the deliveries, wouldn't it?

A. The yard was frequently crammed with cars.

Mr. Stickney: When it is crammed, it would take a good deal longer time to get into it, wouldn't it?

A. When the yard is crammed the switching is necessarily slower; yes sir.

Q. It is crammed more or less, isn't it?

A. At times.

Q. You spoke about the D rail. When the switch is thrown for the Great Western track, the D rail is closed, isn't it?

A. When it is thrown?

Q. Yes? A. Yes sir.

Q. So that, in throwing the switch for the Great Western track, the D rail don't bother you any, does it, it don't delay you any, does it?

A. The D rail has to be thrown by some one before the train moves over.

Q. Throwing the switch turns the D rail, don't it?

A. Yes sir.

Q. It don't take any extra time to throw the D rail, does it?

A. Throwing the first switch don't throw the D rail; he has to walk to the D rail and throw it.

Mr. Stickney: Is there a separate switch for the D rail?

Mr. McHugh: Yes sir.

Q. Isn't it a fact, when you throw the switch to let the train in onto the Great Western terminals, you throw the D rail?

A. I don't know.

Mr. Kellogg: You don't know? All right; that is all.

198

Re-direct Examination,

By Mr. Rich:

Q. Mr. Ware, are certain instructions given to the employes of the Union Pacific with reference to the block signal system, as to the effect of it, and as to how and in what manner they shall observe it? A. Yes sir.

Q. Can you state whether or not train men rely wholly or altogether upon the signals as displayed by the automatic system?

A. The Union Pacific men are more careful about flagging and protecting the trains in the Bridge District than the tenant lines. It is a difficult matter to induce foreign line men to comply with the instructions, and to understand that the electric signals do not protect their train, and that they should protect it the same as if the electric signals were not in existence.

Q. Well, is that the practice insisted upon by the Union Pacific to-wit: that the train men shall protect their train in the same manner as if there were no electric signals?

A. Yes sir; carefully instructed.

Q. Under the practice as to deliveries between the Rock Island of freight brought from the west to the Union Pacific, is there any reason, or have any orders ever been issued, or is there any custom, that would prevent the Rock Island from delivering grain from the west to the Union Pacific on the tracks at 6th Street? A. No sir.

Q. Do you of your own knowledge know whether or not the Rock Island does deliver grain from the west to the Union Pacific on the tracks at 6th Street?

199 A. I do not think that they do.

Q. You may state whether or not the new line being constructed for the use of the Great Western as its southern terminus on the westerly side of the Union Pacific tracks, and connecting with the main line Union Pacific track at G street, South Omaha, whether or not that line crosses at about right angles the Great Western tracks or the Northwestern tracks at the Summit where they connect with the Union Pacific?

A. Going east, you mean? the eastbound Rock Island train?

Q. No; I just say, does this new track being built for the Stickney elevators cross at about right angles these Northwestern tracks? A. Yes sir.

Q. And it also crosses at about right angles the new double track road being constructed by the Omaha & Southwestern?

A. Yes sir.

Q. And it connects with the Union Pacific at a point very close to the connection of the Northwestern tracks?

A. Yes sir.

Q. Near the summit? A. Yes sir.

Q. Which of the following two methods would result in the least obstruction to traffic on the Union Pacific: where the Rock Island bringing grain from the west would deliver to the elevators over the new track being constructed connecting at G street; or if the grain was delivered to the Union Pacific by the Rock Island under this agreement, and the Union Pacific should in turn deliver that grain to the Great Western?

A. The Rock Island train eastbound making delivery to the Great Western through the connections near G
200 street, would be required to cross Union Pacific west-bound main line against traffic of both passenger and freight trains, with no protection whatever except what would be given it by the train men. This would take place on a steep grade, a curve a short distance east, and east bound trains following the Rock Island would of course be delayed the length of time that the rear end of the Rock Island train stood on the east bound main line. That would be the case in the delivery to the C. G. W. at G street.

Q. What would be the further progress of the train after it got onto the new track?

A. If this train continued east on the C. G. W. track, it would come out at 20th street, and again cross the west bound Union Pacific main line against passenger and freight traffic, with a curve just east of 20th street, and one just west, in order to enter the east bound main line.

Q. In case the Rock Island train did not continue east to a connection at 20th street, but backed out over the same line it entered on, what would be the course?

A. The rear end of the train would remain on the east-bound main line, blocking following trains, and the engine and the head portion of the train would again cross the west-bound main line on a steep grade against traffic of west-bound passenger and freight trains.

Q. Now, then, in case of the Rock Island making delivery to the Union Pacific at 6th street, what would be the movement of the cars?

A. If the Rock Island delivered grain to the Union Pacific at 6th Street, for delivery to the Great Western, the train of course would not necessarily stop until it reached 6th Street. The grain would be set out on a track there known as the "hold" track, where it would remain until the Grain Exchange at Omaha had inspected it, which in some cases is four or five or six days. It would then be taken by a Union Pacific engine from the hold track, which is between the main lines, and hauled on an inside track to 13th Street, where it would cross the east and west bound passenger main lines, protected by an interlocking plant with D rails both east and west of the point where the freight trains would cross; so that, in case of employees violating the rules, they could not collide with this Union Pacific train. If rules were violated, they would simply run off the D rail and onto the ground. It would then continue from 13th street to 20th street on a side track, and in making the entire trip from 6th street to 20th street, would use about 150 feet of the main lines. A Tenant line taking a car of grain from 6th street to 20th street would be on the westbound main line a distance of 3,550 feet, and, when they got to 20th street, would block the westbound main line until after they had made their deliveries. If this foreign line in making deliveries to the Union Pacific line had some grain for the Great Western, the number of switches, of course, would be doubled.

Q. In case of grain over the Rock Island from the west, not delivered to the Union Pacific or the Great Western in Omaha, but delivered to the Great Western in Council Bluffs, what would be the course of the Rock Island train?

A. The Rock Island train would proceed to Council Bluffs, and make the delivery on tracks that did not belong to the Union Pacific.

Q. That is, it would run straight from South Omaha over the west bound track to Council Bluffs?

A. Over the east bound.

Q. Over the east bound track? When that grain, then, is picked up by the Chicago & Great Western to be delivered into the independent elevators, what would be the movement of the train or its course?

A. The C. G. W. would take this train from Council Bluffs direct to 20th street, and back into their tracks at 20th street.

Q. Would that back in, or run right on into the track that leads to the elevator?

A. If it take it down to the elevator, independent elevator, they would use our main line from Council Bluffs to 20th street; there they would head in onto an inside track, and leave our main line, and continue on this inside track to the independent elevator.

Mr. Stickney: I wish you would point out that track on the map.

Q. Point out the track that you could head in on at 20th street on the Great Western going west?

A. Head in at 20th Street; yes sir.

Q. Point it out on the map, if you can.

Mr. Stickney: No t'aint there. I know positively it isn't there.

A. I know that it is there.

Q. Point it out. Headed in coming west, you said?

A. Yes sir; from the westbound main, they head in onto that track.

203 Q. At 20th Street? A. At 20th Street.

Mr. Stickney: Where is that?

A. On arriving at 20th street the train proceeds past the crossover, backs in—

Q. (Interrupting) Backs in?

A. (Continued) And heads in onto that track leading to the Great Western elevator, an inside track.

Q. It is backed in first, isn't it?

A. It is headed in to take the lead going to your elevator.

Q. It backs in first?

A. It backs in first and then heads in.

Q. When you made that statement, you knew that, didn't you?

Mr. Kellogg: What's the use telling something he knows is not true?

A. Don't that train head in at 20th street?

Q. It backs in.

A. Did you ask me if it backs in first?

Mr. Kellogg: Please state the facts.

Questions by Mr. Rich:

Q. Can a connection be made at 20th street so that a train coming from the east over the west bound main line can head in directly onto those sidetracks west of 20th street? Can a connection be made with the west bound main line, leading to the independent elevators?

A. I don't understand whether you mean under the present trackage arrangement, or in case we make changes?

Q. Make changes? Can such a connection be made so that they can head right in without backing?

204 A. Yes sir. Connections can be made to enable a train westbound to enter the C. G. W. inside track leading to the elevator.

Q. Do you know at what point Burlington trains running from South Omaha to Gilmore over the Union Pacific lines enter onto the Union Pacific lines? What point in South Omaha? A. The Burlington going to Gilmore Junction?

Q. Going to Gilmore Junction; yes?

A. The Burlington in going to Gilmore Junction comes out through the cross-over on our west bound main line.

Q. At what point, what cross street, in South Omaha?

A. I think it is N. street.

Q. At what point does the Missouri Pacific connect with the westbound main line in operating its trains from South Omaha to Gilmore Junction?

A. Use the same track at N street.

Q. Does it enter onto the west bound main line at N. street?

A. Yes sir.

Q. I thought it used the Belt Line that entered at G?

A. That track is not used. The Missouri Pacific used to use our tracks right where the Great Western now is going to enter, and they discontinued for a very good reason.

Q. That now is no longer used? A. No longer used.

Q. The Missouri Pacific does enter now on the west bound main line at about the same point that the Burlington does, to-wit at N. street?

A. Yes sir—I would not try to fool you about heading in. I knew Mr. Stickney was out there last night. I was not attempting to fool you at all.

205 Mr. Stickney: Well, you didn't.

A. I didn't.

Questions by Mr. Rich:

Q. You may state whether there is now, under the present method of handling trains between the west end of the bridge and South Omaha, any complaint on the part of tenant lines about existing congestion and difficulty in moving trains?

A. Yes sir; we have had a great deal of complaint from the tenant lines, including the C. G. W.

Mr. Stickney: What territory does it cover?

Mr. Rich: I said between the river and South Omaha—between the west end of the bridge.

A. Yes sir; it is badly congested at present time.

Mr. Kellogg: You do not agree with Harriman that you have got room enough?

A. I don't know.

Mr. Rich: Might have had at one time.

A. We got more business now.

Mr. Kellogg: This was not long ago.

Q. In moving the trains over the Union Pacific tracks between Council Bluffs and a point a mile and a half west or south of the Union Pacific station in South Omaha, do the tenant lines move their trains at any particular times, governed by the Union Pacific?

A. No sir; the times are very irregular: I might say that we have on the Bridge District course about 46 regular scheduled trains during 24 hours.

Mr. Kellogg: Where is that? Across the bridge?

A. Yes; over the Bridge District.

206 Mr. Stickney: The Bridge District? What is the Bridge District?

A. That is from Council Bluffs to Gilmore.

Mr. Stickney: Forty-six schedule trains?

A. I think it is forty-six; it is about that number (Answer continued) which represents a very small proportion of the trains that pass over the Bridge District. We have had as high as 228 trains pass over the Bridge District during that period.

Q. Did you ever see the decree entered by the United States Court in the case of the Great Western against the Union Pacific, giving the Great Western certain rights over Union Pacific tracks between Council Bluffs and South Omaha?

A. No sir.

Q. Did you have any understanding with reference to that decree and its scope?

A. I was notified by the General Superintendent, Mr. Park, that we would permit the Great Western to use tracks in a similar manner as used by other tenant lines.

Q. Have you ever had occasion to examine the contracts with the tenant lines? A. Yes sir.

Q. Then, you supposed that the rights of the Great Western under the decree were just the same as the rights of any of the contract roads? A. Exactly.

Q. In issuing the order that you did issue, did you have any intention of disregarding or violating any injunction of this court in the suit between the Great Western and the Union Pacific?

207 A. No sir; and I did not understand that I was violating those instructions when I treated the Great Western the same as other tenant lines.

Q. In putting the questions to you with reference to the suit, I might state that I use the "Great Western" as interchangeable for the "Mason City & Fort Dodge"?

Mr. Kellogg: Yes; there is no question about that; same thing.

Q. Did you have any idea, or did you know that you were violating any decree or any injunction granted by the United States Circuit Court in the case of the Mason City & Fort Dodge Railroad Company against the Union Pacific Railway Company?

A. I had no reason to think so.

Q. Had you ever had any conversation personally with any official or employe of the Great Western or the Rock Island about a direct interchange of cars? A. Any conversation?

Q. Yes, sir. A. No, sir.

Q. Had you ever had any correspondence in person with any official or employe of either the Mason City & Fort Dodge or the Great Western or the Rock Island?

A. To the best of my recollection, after one of those lines attempted to make a direct delivery to the other line, I received a letter stating—(interrupted)

Q. Well, you state you received a letter? Who from?

A. I received a letter; I am not sure whom I received that letter from.

Q. But you had received no letter or had no conversation with employes of either of those roads, prior to the
208 time this attempt was made? A. No, sir.

Recess was taken until 1:30 P. M., after which time the following proceedings were had, viz.

Questions by Mr. Rich.

Q. Mr Ware, the record shows that on yesterday you testi-

fied that there was a grade at the proposed connection of the new line from the independent elevators connecting with the westbound main line of the Union Pacific at G Street, South Omaha, of 66 feet to the mile? Do you wish to make any correction with reference to the grade at that point?

A. If I remember correctly, my statement said that it was 66 feet to the mile, and on a steep grade. My statement as to its being on a steep grade is correct. As to the number of feet to the mile, it is 66 feet to the mile east of this place some little distance; but right at this connection I understand now it is about 40 feet.

Re-cross Examination,

By Mr. Kellogg:

Q. It is on a straight track, isn't it? it isn't on a curve?

A. There is a curve just east.

Q. But there is no curve where the connection is made?

A. It is on a straight track looking west from where the connection is made.

Q. At the place where the connection is is a straight track, isn't it?

209 A. Straight track to the south, and a curve east of there.

Q. Does the curve commence right at the place of connection? A. Just a little bit east of there.

Q. How far east of there?

A. I don't know the exact distance.

Q. Isn't it more than a block east of there?

A. Possibly, it is about a block, or such a matter.

Q. How wide are those blocks? A. I do not know.

Q. The curve commences east of F. street, doesn't it?

A. (referring to map) The point of the curve, according to this map, would indicate very close to F street.

Q. A little east of F. Street? A little bit east of F. Street? So there would be a distance—the curve commences something over 500 feet east of the connection.

A. I do not know the distance in there.

Q. If that map is a scale of 400 feet to the inch, it would be more than 500 feet, wouldn't it?

A. It would look to me about 500 feet; yes.

Q. You say the Union Pacific or employees are particular about handling trains between blocks, that is extra trains and switching trains, do you? A. Yes, sir.

Q. Aren't the other employees, also?

A. Not as much so; no sir.

Q. Isn't it a fact that every employe of every company who switch and handle trains over this track, are subject to examination by your officers? A. They are; yes, sir.

210 Q. Just the same as your own?

A. They are examined. I am not, however, in touch with the foreign employes like I am with the Union Pacific employes.

Q. They perform work and run their trains on this track under the direction of the Union Pacific yardmaster and train dispatchers and other officers, don't they?

A. Yes, sir.

Q. And they are subject to examination by those officers?

A. They are.

Q. And, if they do not show themselves qualified, you do not let them work there?

A. We do not, if we can avoid it.

Q. You haven't found any trouble in avoiding it, have you?

A. I had with the Great Western; yes.

Q. What complaint have you made?

A. My complaint to the Great Western about their employes leaving switches unlocked, and I got information on it.

Q. Haven't you made complaints of your own employes leaving switches unlocked? A. Yes sir; we can regulate those.

Q. Haven't the Great Western taken steps to regulate theirs? A. No, sir.

Q. Haven't taken any steps at all? A. No, sir.

Q. And made no complaints anywhere?

A. I can't do that.

Q. O, we will see about that. You can't do it?

A. I can furnish you evidence of those complaints; yes sir.

Q. All right, sir. You also have complained of your own employes leaving switches unlocked, and doing things?

211 A. Yes sir.

Q. You stated, if the Rock Island Company was to deliver grain into the Great Western grain terminals at G. Street, at their connection at South Omaha, they would leave a part of their train standing on your main track, didn't you?

A. Under certain conditions; yes.

Q. How do you know that?

A. I don't know what else they would do with it.

Q. You don't know what else they would do with it? You know they have a yard at Albright, don't you?

A. I do not know that they have a yard at Albright.

Q. You are not familiar with their yards at Albright?

A. No sir.

Q. How long have you been Superintendent of this Company? A. A little over a year.

Q. How long have you been in the employ of this Company?

A. Sixteen years.

Q. Around Omaha? A. Yes sir. A good part of the time.

Q. In what capacity?

A. Train dispatcher, Assistant Superintendent, Superintendent.

Q. You do not know that they have got a yard connected with your yards between Gilmore and South Omaha?

A. I do not think they have.

Q. You don't think they have got any such yard?

A. Connecting with our yard, do you say?

Q. Connecting with your tracks?

A. I know that there is a yard of the Rock Island over to the west from Q Street at South Omaha, but I think it was right along there about their depot. Just what yards
212 they have got I do not know.

Q. You don't know that they have a yard at Albright? A. I know that they have a station there.

Q. Is your information on that as accurate as it is on the new line you are building there at South Omaha?

A. Just about.

Q. You do not know much about that?

A. I do not know very much about the Rock Island at Albright; no sir.

Q. If the Rock Island company broke up their trains at Albright, and took their train of grain destined for the Great Western grain terminal, with a switch engine, and took it down to F street, put it in on the Great Western terminal, they would not leave their train standing on your main track?

A. If that is all they had in their train.

Q. That is, they would not do that?

A. No sir; it would not be necessary.

Q. And your other statement was merely assuming that they would do that?

A. The fact they have done it in such work as that indicates to me that they have no break-up yard at Albright.

Q. You know they do break up trains at Albright?

A. I don't know that they do; but the condition of their trains, the way they set out cars, with a road engine, would indicate to me they do not use their switch yards to do this kind of work that you mention.

Q. Well, now, you do not know that the Rock Island Company don't break up trains at Albright, do you?

213 A. I have never known a Rock Island switch engine to pull out of their yard, and enter our tracks, and distribute cars, so far as I know, the Rock Island road engines, what you would call through trains, come into Omaha with a number of cars, and set out a few, and the trains proceeds on to Council Bluffs.

Q. Come into Omaha where? A. From the west.

Q. At what place does it stop and set out?

A. At what place?

Q. Yes.

A. Wherever they make deliveries to the Union Pacific.

Q. Where is that? A. East end of Omaha yard.

Q. At what place? A. At about 6th Street.

Q. Did you ever know them to stop between South Omaha and 20th Street, and set out cars to anybody?

A. South Omaha and 20th street?

Q. Yes sir.

A. That is not the present practice, I don't think.

Q. You never them to do it? A. No sir.

Q. If they broke up their trains at Albright, and took their grain cars, they would not of necessity leave any cars standing on your main track while they switched them in to the Great Western, would they? A. If they did it?

Q. That is what I asked you?

214 A. They would not leave any cars on our main line, except during the time that would be consumed stopping and opening the switches, to cross our westbound main line.

Q. Well, any engine has got to do that, hasn't it, whether it is Rock Island or any other?

A. There ain't any engine doing that on our line at the present time.

Q. If there is a connection made at F street or G street, somebody has got to go into it haven't they?

A. I am sorry to say they have; yes sir.

Q. And somebody has got to throw it? A. I think so.

Q. The Rock Island engine has got open the switch same as any other engine

A. There ain't any engines open switches there.

Q. That is not made yet? A. No.

Q. When it is made, some engine has got to open the switch to get in?

A. Any engine that uses it will have to open the switch, yes sir.

Q. They will have to stand still while the switch is opened, to let the train out of that yard? A. Yes sir.

Q. That would be the same with a Rock Island engine as any other engine? A. Yes sir.

Q. That is what I thought—The seven days which are contained in this schedule here, Exhibit 4, so far as you know, I suppose, are ordinary representative seven days of business?

215 A. Yes sir.

Q. Were not selected for any particular purpose?

A. No sir.

Q. And is a fair illustration of the business you were doing from time to time? A. Yes sir.

Q. And that and your time table show there are more than twice as many trains cross the bridge as there are between South Omaha and the Union depot, don't it?

A. I didn't catch that.

Q. That statement in the schedule shows there are more than twice as many trains that cross the bridge?

A. Before handing that to you, I can give you some information Mr. Stickney wanted this morning: The bridge dispatcher who made out those sheets informs me that two of those sheets cover the movement between 11th street and C. & N. W. Junction; the other two sheets cover the movement of trains between C. & N. W., Junction and South Omaha.

Q. Well, let us get that straightened out. I want to know what we are going to get at.

(No answer.)

Questions by Mr. Rich:

Q. What effect, if any would that curve in the track from 400 to 500 feet east of the proposed connection between the new line from the independent elevators connecting with the west bound main line of the Union Pacific at G Street, have in the operation of trains?

A. It would obstruct the engineer's view moving west; the engineer being on the right side of the engine or the west side, could not see that connection until he would be within a short distance from it.

Mr. Stickney: How short?

A. Well, I would say just the distance that the track is straight east of there.

Q. Would he see any distance across the curve?

A. Across curves—across the curve, if he would go over on the fireman's side, and leave his engine without anyone in charge of it.

Mr. Stickney: Well, I think I have rode around curves on an engine when I would see right across the curve; I think I have. I am inclined to think that that is the natural law of vision, too.

A. A freight train on the east bound line, east of the point where you would connect, would certainly obstruct the view from the engineer looking across there.

By Mr. Kellogg: Q. The Rock Island or the Great Western engine and cars would not obstruct the view any more than a Union Pacific or anybody else, would it? A. No sir.

Q. So it don't make any difference about that, whose engine it is, does it? A. No sir; any engine.

Mr. Kellogg: That is all.

217 Mr. Rich: It is stipulated and agreed that the track concerning which the last witness has testified as extending from the south end of the Great Western terminal at or near the summit, and running along the west side of the Union Pacific main line, to a connection with the west bound track of the Union Pacific at a point near G. street, is the same track as provided for in the supplemental decree entered in the case of the Mason City & Fort Dodge Railroad Company against the Union Pacific Railway Company, on the — day of —, 1906, and constructed by the Union Pacific road.

218 A. D. Schermerhorn called as a witness on the part of the plaintiff, being duly sworn, testified as follows:

Direct Examination,

By Mr. Rich:

Q. Do you hold a position with the Union Pacific road?

A. Yes sir.

Q. What position?

A. Division engineer, Nebraska division.

Q. How long have you been with the Union Pacific road?

A. Twenty-seven years.

Q. How long have you been in Omaha with the Union Pacific road? A. Twenty-five years.

Q. As an engineer you are familiar with the road, are you, from the west end of the Missouri River bridge to South Omaha?

A. Yes sir.

By Mr. Stickney: You are a civil engineer? The word engineer here misleads.

By Mr. Rich: Yes, civil engineer.

Q. Mr. Schermerhorn, coming from the west end of the Missouri bridge west towards South Omaha, you say state whether or not the track is level for any distance west of the west approach of the bridge?

A. Well, not exactly, it is not exactly level; there is an easy up grade from the west end of the bridge to the Union Station; through the Union Station the tracks are level to 10th street; between 10th street and 13th street there is an up grade of 1%—well across 13th street is a practical level.

Q. Give that in feet for the benefit of the laymen.

A. That is the 1%?

219 Q. Yes sir.

A. The 1% would be one foot rise to 100 feet in length.

Mr. Stickney: From 13th street to what street?

A. 13th street to 20th street the grade is .08, which would be about 40 feet per mile. From across 20th street there was a little piece of grade that was level 200 or 300 feet. From that point west to Vinton Street the grade is 1 and .25 or 66 feet per mile.

Q. Vinton street is the street that the viaduct goes over?

A. The boulevard viaduct; yes sir.

Q. Near the top of the grade, near the summit?

A. It is a quarter of a mile or more—well, it is half a mile east of the summit.

Mr. Stickney: From there to the summit is what?

A. From there to the summit it is .35 per cent. That would be about 16 or 17 feet per mile.

Mr. Stickney: Where is the Summit?

A. The summit is 300 or 400 feet west of the overhead Burlington crossing.

Q. West or south? A. West—or south, yes sir.

Mr. Stickney: Yes, I see; very well.

A. There is a short piece of level grade there, probably, 500 or 600 feet; from that point west to below the South Omaha Station it is .75 per cent, or about 40 feet to the mile.

Mr. Stickney: .75 is less than 8%75—

A. That is 3-4, that would be 3-4 of 52—about 43 feet per mile; it is not quite that, between 40 and 41.

Mr. Stickney: It is 39 6-10, 40 feet, that is about it.
220 It extends to the South Omaha Station?

A. South Omaha Station? Yes sir.

Q. There is no point between that junction, the junction agreed upon when near F street and South Omaha station, where the grade would be any more favorable for a junction?

A. It is a uniform grade from South Omaha Station to the Summit.

221 Frank H. Keeshen, called as a witness upon the part of the defendant, the Union Pacific Railway Company, being duly sworn, testified as follows:

Direct Examination,

By Mr. Rich:

Q. Have you ever been in the employ of the Union Pacific Railroad? A. Yes sir.

Q. How long, and between what periods?

A. I was employed by the Union Pacific from 1874, March 26, 1874, up to November the first, 1904, with the exceptions of five or six years when I was absent from their service.

Q. What years were you absent from the service of the Union Pacific? A. Well, there were various times.

Q. I will withdraw that question; I will put it this way: Immediately preceding the Fall of 1904, how many years had you been in the employ of the Union Pacific at Omaha?

A. About twenty-two years.

Q. What positions did you hold during that time?

A. Brakeman, conductor, yardmaster, trainmaster and assistant superintendent.

Q. At the time you quit the employ of the Union Pacific in the Fall of 1904, did you hold the position at that time of Assistant Superintendent? A. No sir.

Q. How long were you assistant Superintendent?

A. In the neighborhood of two years.

222 Q. What years were those?

A. I do not remember just what years those was.

Q. What position did you hold when you quit the service in 1904?

A. Yardmaster for the Union Pacific at Kansas City.

Q. How long had you then been in Kansas City?

A. Sixty days.

Q. What position did you hold at the time you left Omaha in 1904?

A. General yardmaster at Omaha in charge of terminals included in the Bridge District.

Q. How many years had you held that position?

A. One year.

Q. And then, prior to that, what had been your position?

A. General Yardmaster for the Union Pacific at Denver.

Q. How long were you there? A. One year.

Q. That would take you up into 1903? Then in 1902, you were in service at Omaha, were you? A. 1902? No sir.

Q. Where were you? A. Colorado Southern, Denver.

Q. Were you with the Union Pacific in 1901? A. No sir.

Q. In 1900? A. General yardmaster at Cheyenne.

Q. When before that were you last employed at Omaha?

A. I can't just give you the date, but it was about two years previous to my service at Cheyenne.

Q. Well, that would be along in 1898 or 1899?

223 A. That is—I think that is as near as I can remember.

Q. What position did you hold in Omaha at that time?

A. Passenger train conductor.

Q. How long were you Yardmaster at Omaha?

A. One year.

Q. And give me that year again, will you? I have forgotten it?

A. Between September 1st, 1904, and September 1st, 1905.

Q. What year were you employed as a switchmen in Omaha? A. I never did switching in Omaha.

Q. Never did any switching in Omaha?

A. Not as a switchman.

Q. During the time you were Yardmaster in Omaha, what were the limits of the yard?

A. Council Bluffs and Gilmore—Broadway, Council Bluffs, and Gilmore.

Q. And during that time, were you familiar with the movements of trains running over the Union Pacific lines by what are known as tenant lines or contract roads—Northwestern, Milwaukee, Rock Island? A. Yes sir.

Q. Was it a part of your duties to protect the movement of the trains of these various roads over the Union Pacific tracks in the yard limits? A. Yes sir; it was.

Q. At that time, if the Northwestern, Milwaukee, or Rock Island brought freight from the east destined for Omaha locally, or destined for a connecting line at Omaha, where would those roads deliver the cars to the Union Pacific?

A. The delivery was made at a point between 10th and 6th Street.

224 Q. That is at first? A. At first.

Q. How long was the delivery made in that manner, if you remember?

A. About eleven months; that is during my administration.

Q. During your administration, was the point of delivery changed or moved? A. Yes sir.

Q. Where? A. To 20th street.

Q. In case the Union Pacific had freight or cars, either coming over the Union Pacific lines from the west or switched from industrials on Union Pacific tracks in Omaha, or from the Union Pacific freight house in Omaha, where would the Union Pacific make delivery of those cars to the three roads, three tenant roads, or either of them?

A. At 6th street, in the upper yards.

Q. In case the Union Pacific had freight or cars for delivery to the Chicago Great Western, where would those cars be delivered?

A. They were delivered at 6th Street during my administration.

Q. They were delivered at 6th Street during your administration? A. Yes sir.

Q. And in case of cars or freight brought to Omaha by the Great Western for delivery to other lines or for local delivery, or for delivery to Union Pacific industrial tracks, at what point would the Great Western make delivery to the Union Pacific?

225 A. For eleven months during my administration they were received on a track between 10th street and 6th street, in the upper yards.

Q. And for the balance of the time where were they delivered? A. 20th Street.

Q. During the time you were with the Union Pacific, if any of the tenant lines delivered cars, or had cars for delivery, at Omaha, to the C. B. & Q., the Missouri Pacific, or the M. & O., who would make those deliveries,—the tenant lines or the Union Pacific? A. The Union Pacific.

Q. And where cars were to be delivered to the C. B. & Q., the Missouri Pacific, or the M. & O., where would the tenant lines deliver those cars to the Union Pacific?

A. On their connections in what is known as the lower yard.

Q. No; where would the Rock Island, Milwaukee, or Northwestern deliver those cars to the Union Pacific?

A. On track between the 10th street Viaduct and 6th Street?

Q. For a while? A. For at least eleven months.

Q. And afterwards they were delivered at 20th Street?

A. 20th street.

Q. And in case of the C. B. & Q, or Missouri or M. & O. having cars for delivery to either the Great Western, Rock Island, Milwaukee, or Northwestern, where would those roads deliver the cars to the Union Pacific?

A. Missouri Pacific would deliver on our receiving track at what is known as Davenport Street in the lower yard. The M & O would deliver to the Union Pacific on what is known as our receiving track, at a point north of the Union
226 Pacific shop fence, in the M & O yards.

Q. Near Cass street?

A. Beyond Cass Street, quite a ways north of Cass street.

Q. The Burlington?

A. The Burlington would deliver on our track known as our receiving track which extends north to Douglas Street.

Q. And in case of delivery by the Union Pacific to either of the three roads you have just named, where would those deliveries be made? On the same tracks you have just named, or on delivering tracks?

A. On delivering tracks in the same district, paralleling the track we receive from.

Q. During the time you were with the Union Pacific, did either of the tenant lines, the Chicago, Great Western, Rock Island, Northwestern or Milwaukee, ever make deliveries to either the C. B. & Q., Missouri Pacific or M. & O., themselves?

A. No sir; not to my knowledge.

Q. Did they ever attempt it? A. Not to my knowledge.

Q. Did the C. B. & Q., Missouri Pacific, and M. & O., ever make or attempt to make deliveries of cars to either of the other four tenant roads named, at Omaha?

A. No, sir; not to my knowledge.

Q. Do you remember, in case the Chicago, Great Western, Milwaukee, Rock Island, or Northwestern, brought cars from the east for delivery to each other, where would that delivery be made—Well, answer the question, if you can?

A. Well, with reference to what class of business, or what destination? I will answer the question: Council Bluffs
227 is the interchange point, as far as I know, between the eastern roads and the Union Pacific.

Q. In case the Northwestern brought a car of freight from the east to Council Bluffs, routed west over the Rock Island from that point, where and how would that interchange be effected?

A. I would expect the interchange to be effected at Council Bluffs.

Q. In case the Rock Island brought in from the west a car of freight to be delivered either to the Great Western, Milwaukee, or Northwestern, where and how would that delivery or exchange be made or effected?

A. I would expect that interchange to be made at Council Bluffs.

Q. So far as you know, during the time you were yardmaster, were the interchanges and deliveries to which your attention has been called made in the manner you have indicated?

A. Yes sir.

Q. During the time you were yardmaster, did you ever know the Rock Island to make a direct exchange or delivery in Omaha to the Great Western of a car of freight brought either from the east or west? A. No sir.

Q. Did you ever know the Rock Island to attempt it?

A. No sir.

Q. Did you ever know the officials of the Rock Island or any employe to ask permission so to do? A. No sir.

Q. Did you ever know the Great Western to attempt to make a delivery in Omaha or South Omaha direct to the Rock Island of a car of freight? A. No sir.

228 Q. Did you ever know of any official or employe of the Great Western asking permission to make such delivery either at Omaha or South Omaha? A. No sir.

Q. Did you ever know either the Great Western, the Rock Island, the Northwestern, or the Milwaukee, to drop cars in Omaha at any of the designated points of delivery, 20th street or 10th street, for the purpose of having them switched from there to either of the other tenant roads? A. Yes sir.

Q. In case that was done, what course was pursued?

A. The cars were left on the tenant line, switched by the Union Pacific to the different connections, or to the different industries as carded, or as billed.

Q. In case the Chicago & Northwestern, the Rock Island, the Milwaukee, or the Great Western, should drop a car loaded with freight on the tracks near 10th or 20th street, for delivery to either the Rock Island, Northwestern, Milwaukee or Great Western in Omaha or South Omaha, would that delivery be made by the Union Pacific?

A. We have never received any such business.

Q. Did you ever have any request from either of the four roads named to transact any such business?

A. Nothing, only when cars would come to us misrouted or misbilled; misrouted or misbilled cars would be delivered back to the connection from which we had received them, for proper delivery.

Q. Do you know of instances where they were misrouted?

229 A. Yes sir.

Q. Describe how that could occur?

A. The only reasons I can give for it is that it was brought about by some billing agent who was not familiar with the junction points, and, instead of routing or billing to its connection at Council Bluffs, he would say Omaha; consequently, the car would be brought to Omaha as billed, to be set out for delivery at Omaha.

Q. What would you do with cars left at delivery points under those circumstances?

A. Deliver back to the line from which we have received them.

Q. If you received a car under those conditions from the Rock Island, what would you do with the car?

A. Deliver back to the Rock Island.

Q. At what point? A. 6th Street.

Q. To be taken to Council Bluffs, to be exchanged over there in the pool yards?

A. Just as they choose about that.

Q. During the time you were yardmaster with the Union Pacific Railroad Company, did you ever know an instance of any one of the four tenant lines making direct delivery, the one to the other, within the City of Omaha? A. No sir.

Q. Do you know of your own knowledge how else any car load of freight was handled while you were yardmaster, where the freight was brought into Omaha by one of the tenant lines from the east, for shipment west over some other road?

A. Received by the Union Pacific from the tenant line be-

230 between 11th Street and 6th Street; for deliveries eleven months later on, at 20th Street; taken by the Union Pacific, delivered to the freight house for handling.

Q. The Union Pacific freight house? A. Yes sir.

Q. In case anyone located on Union Pacific tracks in the city of Omaha had a carload of freight to ship east over anyone of the tenant roads, or any other road, what arrangement was made for a car in which to load that freight, and who made that arrangement?

A. If there was no car available in the yard to fill the order, the car was ordered from the connection which the shipper wanted to use. The empty was furnished and placed for loading.

Q. Where would that empty be delivered to the Union Pacific? A. At Omaha, between 11th and 6th streets.

Q. Then, what would be the course?

A. The empty would be switched by the Union Pacific switch engine to the point of loading, if on our tracks; if going to connections, would be delivered to connections at Omaha.

Q. When loaded, what would be its course?

A. If it came from connections, it would be delivered back to the Union Pacific through the interchange, handled by them to the delivery track between 11th and 6th, and in the neighborhood of 6th Street, in the upper yard. If it came from our industrial tracks, it would be switched from the industrial to the interchange track at 6th Street.

Q. And there delivered to the road to be taken east?

A. Placed on the delivery track.

Q. Prior to the time you were Yardmaster at Omaha, did you occupy any position that made you familiar with
231 the method of handling cars of the tenant roads over the Union Pacific between Council Bluffs and South Omaha?

A. Nothing more than being a train conductor.

Q. Did it often occur that cars were delivered to the Union Pacific on the delivery track between 11th and 20th street, that had been wrongly billed? A. Very often.

Q. And in all instances those cars were set down at 6th street to be returned to the delivering road? A. Yes sir.

Q. To the delivering road? A. Yes sir.

Q. Are you familiar with the present location of the independent elevators? A. Yes sir.

Q. And are you familiar with the Union Pacific tracks as they now stand between Omaha and South Omaha?

A. Yes sir.

Q. Are you familiar with the connection as existing at present between the Union Pacific tracks and the Great Western tracks leading into the 16th Street freight house?

A. Yes sir.

Q. And are you familiar with the connections at a point leading onto a track north of the Union Pacific main line that leads into the elevator or terminal yards? A. Yes sir.

Q. Are you familiar with the grounds of the proposed track beginning at the south end of the elevator terminals
232 near the Summit, and extending southerly west of the Union Pacific main line to a connection with the west-bound main line of the Union Pacific at a point near G street, South Omaha? A. Yes sir; every foot of it.

Q. You may state whether you are in a way familiar with the operation of trains over the Union Pacific road between Council Bluffs and South Omaha, with regard to the manner of their operation and the number of them, both of Union Pacific and the tenant roads?

A. Well, the number of Union Pacific trains has increased during my absence. Previous to my leaving here, there was quite a number of them.

Q. Are you in a general way familiar with them now?

A. Yes sir. Tenant line trains also have increased, and I am in a general way familiar with them.

Q. You may state whether or not if all of the tenant roads were allowed to make deliveries of cars directly to each other in Omaha, or directly to the Great Western freight yards leading into 16th street, or directly into the grain terminals either over the connection at 20th Street or the connection at G street, —whether or not that would tend to increase the congestion on the Union Pacific tracks between Omaha and South Omaha?

A. I think it would.

Cross-Examination,

By Mr. Kellogg:

Q. One of the elements of that increase would be, you think, delivery of cars between the tenant lines, do you?

A. Yes sir.

233 Q. They do not deliver any cars between the tenant lines this side of Council Bluffs, do they?

A. Not that I know of.

Q. And they wouldn't under any circumstances, would they?

A. I am not prepared to say what they would do; it is what they are doing.

Q. It would be a more convenient and natural thing for them deliver at the pool yards in Council Bluffs, wouldn't it?

A. Yes sir.

Q. As they always have? A. Yes sir.

Q. So that, unless they change their system and undertake to make a yard of interchange delivery somewheres in Omaha, that item would not cut any figure, would it? A. No sir.

Q. The other item that you mentioned is the tenant lines delivering direct to the Great Western terminal at G street in South Omaha, and to the Great Western terminal at 20th Street? Those are the other two items, are they not?

A. Yes sir.

Q. Let us see about G street; If grain comes from the west to G Street—I speak now of G street as the connection with the Great Western grain terminal? You know what I mean? A. Yes, sir; I know where the point is.

Q. If grain comes from the west, to go in at G street, it congests the Union Pacific's tracks between that and the river less to have it go right in there, and leave the main track, and not go on it again, than it would to pull it clear down to 6th Street and also to pull it back, wouldn't it?

234 A. No sir.

Q. It don't? A. No sir.

Q. In other words, it uses the Union Pacific's tracks more?

A. It don't use it more; no; I misunderstood you.

Q. I thought you misunderstood me.

A. The mileage would be less.

Q. It would congest the Union Pacific's tracks less?

A. Well, that is another thing; I say, No; it wouldn't.

Q. It would use the Union Pacific's tracks less to have it go right in onto the Great Western terminals, and leave the Union Pacific track at G street? A. Yes sir.

Q. Then, it had to be run on down to 6th Street yard, and then run that back? A. Yes sir.

Q. And any continued use of the Union Pacific yards tends to congestion, don't it? A. No sir.

Q. What do you mean by "congestion"?

A. Well, I have seen some of it down there.

Q. Yes. What do you mean by it?

A. I mean where you get completely blocked, and can't move.

Q. The more trains and switching is done between Council Bluffs and South Omaha on the tracks, the more the congestion, isn't there?

A. That is not what brings congestion—No sir; I will answer your question.

Q. It is not? A. Not in all cases.

235 Q. The less use there is of the tracks the more the congestion? A. No sir; not that, either.

Q. Not that, either? You think it would be more use of the Union Pacific tracks, and necessarily more congestion, to have the grain come from the west, go onto the Great Western terminals at G street, onto the Union Pacific tracks there, than it would to run it clear down to 6th Street, over the Union Pacific main line, and run it back into the Great Western terminal? A. Yes, sir.

Q. You think that is the most convenient way to handle that grain? A. Yes, sir.

Q. You would haul it a distance—Take the Rock Island, for instance: The Rock Island connects with the Union Pacific at Albright yard? A. Yes, sir.

Q. They have yards there?

A. I know they have quite a number of cars stored up there.

Q. They have some yards there? A. A number of tracks.

Q. That is just a mile and a quarter from G street, isn't it?

A. I understand that is the evidence that has been given here, that is the distance.

Q. It is about that? that is your judgment?

A. Yes sir; I think that is it.

Q. From Albright to the River, to the 6th Street yards, is a distance of about how far?

A. That would be about four miles.

236 Q. About four miles? All leading through the City of Omaha on the main line of the Union Pacific terminals? A. Yes, sir.

Q. You say it would congest the Union Pacific tracks less for the Rock Island road to haul their grain that mile and a quarter, leave the Union Pacific tracks entirely, and go in on the grain terminals, than it would for them to haul it with their own engine from Council Bluffs down to the 6th Street yard—I should say, from Albright down to the 6th Street yard, and the Union Pacific take it at the 6th Street yard, and switch it onto the Great Western 20th street yards, and for the Great Western to there take it back up to the grain terminals?

A. Yes, sir.

Q. That is your judgment? A. Yes, sir.

Q. Why? Why would it be easier to go four miles than a mile and a quarter?

A. Every stop you make on your main line you congest your traffic just that much more.

Q. Let us get at that. When an engine is bringing a train of cars or a train of grain from Albright down, and putting it into the 6th Street yards, they have to make a stop and switch that in there? A. Yes, sir.

Q. They run out onto the main track east of the 6th Street yards? A. Yes, sir.

Q. And they back into the 6th Street yards?

237 A. Yes, sir.

Q. In doing that, they make two switches onto 6th Street? A. Yes, sir.

Q. On the main tracks at the bridge? A. Yes, sir.

Q. Then, they take their engine, and go back to Albright?

A. Yes, sir, that is, I don't know anything about that, now.

Q. They have to go somewheres, haven't they?

A. Yes.

Q. When they come out, they make another use of the main tracks? A. Yes, sir.

Q. That's three? Then, you take the engine, the Union Pacific engine, and you go down to the 6th Street yards, and when you go in there, you make one use of the main tracks?

A. Yes, sir.

Q. When you come out, you make another?

A. Not necessarily.

Q. In order to get from the 6th Street yards to the Great Western grain terminal, or the Great Western 20th street yard, you have to cross the main tracks?

A. About 300 feet over the main line.

Q. You make another use of it, don't you, then?

A. Yes, sir.

Q. That is five times you have used the main track?

A. Yes, sir.

Q. When you switch it into the Great Western 20th street yards, you have to use the track again? A. Yes, sir.

Q. That is six times or so, then, you see the main
238 line? A. No; you don't have to use the main line.

Q. You don't have to use the main line?

A. No, sir.

Q. Well, drop that out. If the Rock Island Company take the same grain at Albright, and run down to the Great Western terminal, and run it in at G street, they use less than a mile and a quarter of the main track, don't they? A. Yes, sir.

Q. And run it once, and out once? That is all, isn't it?

A. Yes, sir.

Q. You say that is a greater use than the other, do you?

A. Yes sir; I do.

Q. All right. I am willing you should say it.

A. In using that mile and a quarter, they consume more time than you would in getting into 6th Street.

Q. Why is that?

A. Stop and open your switches, and cross your main line, and everything; yes sir.

Q. Have the switches got to be opened at the 6th Street yard?

A. They are handled from the tower by the tower man, the movement of the trains regulated by the tower man. They have all got to be opened at 20th street by a switch tender.

Q. Isn't there a switch tender up here at G street?

A. He is not in existence yet.

Q. There can be, can't they? A. Might be.

Q. If they had a switch tender, wouldn't have to stop any more than they would down here, would they?

A. These things you have got to get, of course.

239 Q. If they had a switch tender, then the use would be less?

A. The stopping of the train is better, I contend; it takes more time than it would to go to 6th Street.

Q. There is no reason why? All they would have to stop is stop through the switch at G street?

A. Open four switches.

Q. Four switches? Why four?

A. You go through the cross-over, across two main lines, onto your lead to your terminal.

Q. You go through the same at 6th street—four switches?

A. More than that, I presume, sometimes.

Q. If they had a switch tender at G. street, there would be no more delay than there is down below?

A. Those are things you haven't got. We are speaking of what you have got, not about what you haven't got.

Q. There is no reason why you can't have a switch tender up there?

A. I don't know anything about that.

Q. If you had a switch tender, there wouldn't be any delay? A. That is a different thing altogether.

Q. Will you answer my question?

A. Yes sir; there would be delay?

Q. There would be no more than down here?

A. The tendency is greater for trouble and delay at that point.

Q. Why more trouble up there where there is less traffic than down here where there is more traffic?

A. It is not the trouble with the traffic: it is the trouble with your own train.

Q. Why isn't there just as much trouble to use that
240 main track at 6th Street as there is up there?

A. Stop on a grade, and start on a grade. It makes the trouble much greater.

Q. It is a grade at 20th Street?

A. The grade is in your favor.

Q. There is more of a grade at 20th street than at 6th Street?

A. The grade is in your favor at 20th Street.

Q. It runs the same way?

A. You are speaking of your connection south of the summit and 20th street and 6th Street.

Q. There is a grade at G street, isn't there? A. Yes sir.

Q. And a grade at 20th street?

A. The grade at G street is against you; the grade at 20th is in your favor.

Q. It is a light grade, isn't it?

A. It is not a great deal of trouble on a grade as light as it is.

Q. Have you seen trouble on that grade at 6th Street—at G Street?

A. I saw some; yes sir.

Q. You have? A. Yes sir.

Q. What Company?

A. Tenant lines as well as the Union Pacific.

Q. Was it trouble on that grade?

A. I have on two trains, storage.

Q. You never saw any trouble down here where the grade is just as heavy, down in the 20th yards? A. 20th Street?

Q. 20th Street is a good deal like that?

241 A. The grade is in your favor.

Q. You have to back it, and then you have to pull it, and then back in, haven't you? A. Yes sir.

Q. You don't go with the grade all the way, do you?

A. No; on westbound business you pull up and back in.

Q. How is it on eastbound business?

A. You were speaking of eastbound business a few minutes ago; now, you are speaking of westbound business.

Q. Well, now, then, assume that the tenant companies are ready to deliver grain or other freight to the Great Western at 20th Street, that would add to the congestion, wouldn't it?

A. Deliver direct to the Great Western?

Q. Deliver it into the Great Western yards at 20th street direct? A. If they are ready?

Q. Yes sir.

A. That would depend altogether on how the Great Western was prepared to receive it.

Q. If the Great Western was prepared to receive it there—assuming that they are prepared to receive it at 20th street?

A. Yes; it would interfere with the grain business a great deal more than it does at present.

Q. Well, why? (A pause) That is all.

Questions by Mr. Stickney:

Q. I want to ask the witness a question: At the time you were yardmaster, had we made the connection with the Union Pacific there at 20th Street? A. Yes sir.

Q. That connection was in?

242 A. Up into your 16th Street?

Q. Yes sir. A. Yes sir.

Q. That was in?

A. You made it after I came here.

Q. You were here at that time?

A. Yes sir; you made all your connections while I was here.

Q. You said in your direct examination that, if the Great Western had a carload of freight to deliver to the Missouri

Pacific, they would bring it over to Omaha, and set it on 20th street yard, say, and the Union Pacific would deliver it to the Missouri Pacific? Is that right? A. Yes sir.

Q. Well, now, supposing the Great Western took that carload of freight, and hauled it right through to the Stock Yards, and delivered it to the Stock Yards Company, and they delivered it to the Missouri Pacific, then your statement would not be true, would it?

A. Well, you say take the freight car to Omaha, and deliver it to the Union Pacific?

Q. No; that was not the statement. The counsel asked you, if the Great Western road had a carload of freight to be delivered to the Missouri Pacific, how they would do it. You said that they would bring it over, and set it on the Union Pacific tracks, and then the Union Pacific would deliver it to the Missouri Pacific?

A. I remember, I know of another delivery; in fact, I know—

Q. Well, I say, if it was true that, instead of doing
243 that, the Great Western carried it right through and delivered it to the Union Stock Yards Company, then the Union Pacific would have nothing to do with that, would they?

A. No sir; nothing at all.

Q. You would not know anything about that would you, as yardmaster?

A. No; not as yardmaster; I wouldn't; not directly.

Q. Would you know anyway? Suppose the trains go through that to the Stock Yards, and we had four or five cars to deliver to the Missouri Pacific, you do not know what cars are on our trains as they go through? A. No.

Q. You would not know anything about it?

A. No; South Omaha would be the only point where they might get that information.

Q. The Union Pacific would not know anything about it?

A. Not unless our agent at South Omaha might know from the billing?

Q. It is entirely possible, isn't it, that that practice has been pursued by the Great Western from the time they have come in here, and delivered their stuff that way to the Missouri Pacific?

A. No reason why they couldn't as far as I can see.

Q. And you would not know anything about it?

A. No; but I know that they have delivered a great many cars in that way.

Q. You know they have delivered some cars in that way?

A. Yes sir.

Q. The same thing is true with the Burlington Road; if they had something going west to the Burlington road, 244 they could take it from Council Bluffs, take it right through, and deliver it to the Union Stock Yards, and they deliver it to the Burlington? A. You could; yes sir.

Q. The Union Pacific would not intervene?

A. It never has been my understanding that South Omaha—the Union Stock Yards were an interchange, or really it was a railroad; it is simply one big industry; and you deliver to that big industry, switch to that big industry; and, as an interchange point it never has been acknowledged as an interchange between railroad and railroad.

Q. It is entirely possible that that business has been going on, and you not know it?

A. That I do not know if that has.

Q. No; You do not know; but I say, it might have been going on and you did not know it? You would have no means of knowing it?

A. No; not unless it was done by some line represented by our agent at South Omaha, and of course it would be up to him to know what he was handling; he would be the man to know.

Q. But you would not know?

A. No sir; I would not know; no sir, I have a representative at South Omaha—would have a representative at South Omaha, that should know—that should know, in a way.

Q. Suppose we had a car to go west on the Northwestern Road, or two cars, or more cars, could not we deliver them through the Stock Yards tracks to the Northwestern Road?

A. You could; but why should you?

Q. Well, it would save the switching charge to us; that is why we should.

245 A. You would give it to the Northwestern at Council Bluffs.

Q. Save the switching charge?

A. No; we would have to pay a switching charge over and give it to the Northwestern. They would place it right in their train.

Q. But it is entirely possible that this was done, or being done ain't it? That is, you would not know anything about it?

A. No; I would not know the kind of cars or the number of cars that might be delivered by any particular line to the Union Stock Yards Company.

Q. You would not know anything about it? A. No.

Q. You did not examine the bills? You did not examine?

A. Unless it was a case where our agent was joint for the different Companies at South Omaha, and where he is in a

position to see the billing, of course, it would go unnoticed by all of us.

Q. Now then, if the Chicago Great Western has been pursuing that practice from the day they came in here, or from the day they got onto the switching racket here, it would be true that the Chicago Great Western, at least, has delivered freight to connecting lines in Omaha without the intervening switch of the Union Pacific in South Omaha, wouldn't it?

A. South Omaha is not Omaha.

Q. Well, Omaha and South Omaha? That would be true, wouldn't it?

A. Not at Omaha—South Omaha. South Omaha is still a city itself.

Q. We understand that.

A. Yes; it is an individual point altogether.

Q. I am not quibbling on the point of Omaha or South Omaha, because if we deliver to the Rock Island
246 direct—(interrupted)

A. You have done that at South Omaha.

Q. Well, we deliver at South Omaha (No answer) Is there any railroad in Omaha that connects with the Union Pacific in Omaha? You use the word "Omaha" technically, in the city of Omaha, is there any railroad that connects with the main line of the Union Pacific in Omaha? A. Yes sir.

Q. What is it?

A. The Illinois Central and the Northwestern, the Nebraska Division.

Q. Not with the main line. I said with the main line that these tenant companies have the right to use?

A. The Northwestern, the Nebraska Division.

Q. Aint that in South Omaha?

A. No; no; that is in Omaha. You haven't got to the limit; you go beyond there.

Mr. Rich: The limit is the other side of the bridge.

Mr. Stickney: I rather think you are mistaken. No; it is just this side (referring to map) Well, t'aint here; t'aint here at all.

A. We also have connection with the Burlington; Burlington passes through Omaha, but they connect with us.

Q. That is one connection?

A. And the Northwestern is another connection.

Q. The Milwaukee road—(interrupted)

A. With the main line.

Q. The Milwaukee road has no line connecting it
247 with the Union Pacific main lines in Omaha, has it?

A. Milwaukee?

Q. Yes?

A. No sir; Council Bluffs is their terminal.

Q. Then, it would be impossible for the Great Western to deliver to the Milwaukee line in Omaha, wouldn't it?

A. Yes; it would.

Q. Now, the Rock Island has no line connecting with the Union Pacific road in Omaha? A. No sir.

Q. Well, then, it would be impossible for us to deliver to the Rock Island in Omaha, wouldn't it?

A. No; we have—there is interchange, everything direct has to be set aside where there is business to be handled between the different lines.

Q. I say direct? A. Direct? No sir; you couldn't.

Q. The Northwestern, you say they have a connection with Omaha?

A. They have a connection in Omaha; it is located near the Summit.

Q. That is the one line that it would be physically possible of those roads for the Great Western to deliver to in Omaha, wouldn't it? A. No; the Burlington.

Q. The Burlington don't connect with the main track? We would have to pass through to connect. They have no road through anything but the main track.

A. Yes; that is right.

Q. The Burlington don't connect with the main track, does it?

A. No; I understand the connection touches our
248 main line of the Omaha line, I understand.

Q. Then, the fact that these roads have never undertaken to interchange freight in the city of Omaha is because it was physically impossible; there were no connections to make such interchange? It is physically impossible to do it, isn't it?

A. I do not know whether that is the reason or not.

Q. It is physically impossible to do it?

A. To deliver direct; yes sir.

Q. Except today; the Great Western has some tracks connected there? But at that time, it was a physical impossibility? That is right, isn't it? A. Yes sir.

Re-direct Examination,

By Mr. Rich:

Q. Mr. Stickney has asked you if it was not a physical impossibility because certain roads had no tracks in Omaha; isn't it a fact that the tenant roads that have no tracks in Omaha have a right to run over the Union Pacific tracks between Council Bluffs and South Omaha? A. Yes sir.

Q. There would be nothing, no physical reason, then, why the Northwestern train running from Council Bluffs to South Omaha could not back cars into Mr. Stickney's freight yards

at 16th Street or 20th Street, would there?—no physical reason why they could not? A. No sir; there would not.

Q. There would be no physical reason why the Milwaukee Line's train running over the westbound track to South Omaha could not back cars into Mr. Stickney's yards in connection with the 16th Street freight house? A. No sir.

249 Q. And there would be no reason why the Rock Island train could not put cars running over the Union Pacific tracks—could not put cars into the Great Western yards in connection with the 16th Street freight house?

A. No sir; not any.

Q. There is no physical reason why any tenant road running west over the west bound track, such as the Chicago Great Western, the Milwaukee, or the Rock Island, should not, when it reaches the point of connection between the Northwestern and the Union Pacific at the Summit, ride over the switch west onto the Northwestern track, is there? A. No sir.

Q. There is no reason, is there, why any tenant road running east over the eastbound main line, should not, as a physical fact, run over the connections with the Burlington tracks in the Burlington yard, is there? A. No sir.

Q. There is no physical reason, is there, why the Chicago Great Western, Milwaukee, Northwestern, or Rock Island, running over the westbound track from Council Bluffs towards South Omaha, when it reaches the connection on the hill track, connecting the main Union Pacific tracks with the yards in the north part of the city, should not enter upon that track, and run down into the yards in the north part of the city?

A. No sir; none at all.

250 Q. If any of these tenant roads should run down that track connecting the main tracks of the Union Pacific with the north yards, there is no physical reason why any one of those tenant roads could not run its engine onto any one of the delivery tracks, provided by the Burlington—delivery or receiving tracks, provided by the Burlington, Missouri Pacific, or M. & O., is there? A. No sir.

Q. The Rock Island has a connection with the main line of the Union Pacific at about the corner of the southeast corner of Swift's yard in South Omaha, has it not? A. Q Street.

Q. Is there any physical reason why the Great Western, Northwestern, the Milwaukee, Rock Island, Missouri Pacific, or Burlington, using the Union Pacific tracks south of the station, should not run onto the Rock Island track at that point of connection? A. No sir.

Q. The connection was all made up so that they could run there if the contract or the agreement provided that they could?

A. Four tracks connected, passing through the Stock

Yards; that is, the Stock Yards tracks connecting up with the lead.

Q. If the agreement so provided, is there any physical reason why any of the tenant roads—any of the four tenant roads, having a right to run over the Union Pacific from Council Bluffs to South Omaha, could not run over any connection or switch to any part of the yards in the City of Omaha to any industrial located on any track of the Union Pacific; or run onto any team track of the Union Pacific in the city of Omaha or South Omaha? A. No sir.

251 Q. While you were yardmaster, you say your jurisdiction extended from Council Bluffs to Gilmore?

A. Yes sir; one mile west of Gilmore.

Q. That included South Omaha? A. Yes sir.

Q. And that included the connection of the Stock Yards tracks with the Union Pacific main line tracks at South Omaha?

A. Yes sir.

Q. Just south of the station? A. Yes sir.

Q. Did you ever know that the Stock Yards Company was making exchanges of cars between railroad and railroad as was suggested by Mr. Stickney in his questions to you?

A. No sir.

Q. If you had known that such an exchange was proposed or to be attempted, what would you have done?

A. I would have taken the matter up at once, to find out if it was legitimate, by higher authority.

Q. So far as you knew at that time, and so far as you were informed concerning the contracts between the various roads, would you have allowed any such exchange as suggested by Mr. Stickney, without consultation with your superiors?

A. No sir. The exchange between the tenant line and the Stock Yards, the Stock Yards property, the Stock Yards business, I considered was legitimate. When it comes to making an interchange, the Stock Yards Company being an intermediate shipper, I would have questioned it. Only I wish to go back of that, that they knew, when you open the gateway, where they are creating that terminal, I want to say

252 you are adding one more link to the chain of trouble as it existed, in making any agreement with them for them to get trains to come into Omaha, which would cause just that much more delay.

Re-Cross Examination,

By Mr. Kellogg:

Q. You think it is to the interest of the Union Pacific to keep every railroad out of Omaha that it can?

A. That is not the question here at all, sir.

Q. And not allow any railroad into Omaha and every

time one gets connected with your tracks, that lets another railroad in?

A. I am not employed by the Union Pacific only as a witness here.

Q. Well, I should judge you were employed as a witness.

Mr. Rich: That is hardly called for, Mr. Kellogg.

Q. All roads have made connections with the Union Stock Yards Company, and with all industries on the Union Stock Yards tracks, for years, haven't they?

A. "All roads", how many roads do you include in "all roads"?

A. The four roads? the Northwestern, the Rock Island, the Great Western, the Milwaukee, the Burlington from the south, and the Missouri Pacific?

A. So far as they are concerned, I do not know anything about it, but they say they have.

Q. They have not only delivered and received cars direct from Union Stock Yards tracks, but from all the industries located on those tracks, haven't they?

A. That I do not know.

Q. From the Uplike Elevator Company, haven't they?

A. They have not been in business very long; I presume they are receiving business from them; yes.

Q. And it has always been done without question from anybody?

A. After they got closed up, their gates; yes.

Q. You don't pretend to say that the Union Pacific regulates to whom that freight is going to on the tracks of the Union Stock Yards, do you? A. No; I don't.

Q. It never has, has it?

A. I think that is where they made a mistake.

Q. They never have regulated it?

A. No; I don't believe they have.

Q. In other words, the gateway to the Union Stock Yards has always been open?

A. That gateway to the Union Stock Yards is barred.

Q. Why? And to all the industries of the Union Stock Yards?

A. The Union Stock Yards is one of the industries; it is one great, large industry in itself; I understand.

Q. There are lines of industry? Packing houses?

A. That includes—(interrupted)

Q. Brewery? A. I think one big industry.

Q. Brewery, packing houses, grain elevators, stock yards, lumber yards, cooperage, coal yard?

A. Those industries some of them are in that territory of the roads bringing in the business?

Q. All the tenant roads that have connected with the Union Stock Yards Company tracks have a free access to all those industries, without any intermediate switch of the Union Pacific, haven't they? A. Yes sir.

254 Q. At all times?

A. No question; the stuff has been delivered right through to the Stock Yards.

Questions by Mr. Stickney:

Q. You testified that the Chicago Great Western and the Milwaukee & St. Paul—that the Chicago Great Western, before they built their own freight house, if they had anything to deliver here in Omaha, they brought it over, and delivered it to you on these tracks, and that you took it down and delivered it through your freight house?

A. Local merchandise, merchandise house cars.

Q. Don't you know, or did you know, that, until we got our own freight house, the Union Pacific refused to perform the services which they were under contract to do for them, for the Great Western; but made us rebill all the stuff at Council Bluffs and pay their local rate of freight over here, in order for them to handle it through?

Mr. Rich: Objected to as immaterial, and not proper cross examination.

A. Of course; I take the cars car for car; they all looked alike to me, and they may have contained merchandise, they may have contained lumber.

Q. You did not know anything about that?

A. I do not know that you were barred from any such privileges at all.

Q. You do not know that the Union Pacific there for a year or more refused to do for us all that their contracts required them to do for the road, and we offered to pay them the same price; they refused to do it, and the only way we could
255 get them to deliver was to take the stuff at Council Bluffs, and deliver it to them, and have them bill it, and we pay their local rate, their local freight over here?

A. I understood—(interrupted)

Mr. Rich: I move to strike out the argument, as improper, incompetent, irrelevant and not proper cross examination.

A. I always understood that we received merchandise in the same manner from the Great Western that we did from the Milwaukee or Rock Island.

By Mr. Kellogg: Q. Whom did you understand that from?

A. In a general way.

Q. You don't know that they did? A. No.

By Mr. Stickney: Q. You knew it possibly same as the other?

A. Yes sir.

Q. But you knew nothing about their refusal to do for us all that their contracts required them to do?

(No answer.)

Mr. Kellogg: That is all.

Mr. Rich: That is all.

Witness excused.

256 Charles Ware, recalled upon the part of the defendant, the Union Pacific Railway Company, testified as follows:

Direct Examination,

By Mr. Rich:

Q. When did you first learn or hear that the Stock Yards Company at South Omaha on its tracks was making exchanges of freight as between railroad and railroad?

A. From the statement just made by Mr. Stickney, is the first definite information I have had.

Q. Have you lately heard it rumored that such a thing was done?

A. During these past few days in regard to this trial.

Q. You never knew it up till this time? A. No sir.

Q. Based upon your knowledge of the contracts with the Great Western, the Northwestern, the Milwaukee, and the Rock Island?

Mr. Stickney: There is no contract with the Great Western.

Mr. Rich: Yes; there is.

Q. Would you regard that, or not, as a violation of that contract?

Mr. Kellogg: I consider that rather immaterial and incompetent.

Mr. Rich: Put in your objection.

Mr. Kellogg: Objected to as immaterial and incompetent.

A. My understanding of the contract would not permit an exchange of that kind.

257 Mr. Kellogg: That is certainly an absurdity of testimony.

Q. If you had heard of this exchange at any time, would you have taken steps to prevent it, under the construction you

put upon these contracts, and the custom prevailing between the tenant roads?

Mr. Kellogg: Same objection, as immaterial and incompetent.

A. Yes sir.

Cross Examination,

By Mr. Stickney:

Q. Did you ever look over your switching tariffs?

A. Look over the switching tariffs?

Q. Yes? A. Yes sir.

Q. Don't you know that what is called the Omaha switching tariff, which is used by all the roads, provides for that very same thing? provides for a transfer from the Northwestern to us, or the Milwaukee, or anybody else, through the Stock Yards?

A. Through the Stock Yards; No sir, I do not understand it that way.

Mr. Stickney: It does. You have a tariff to that effect.

Mr. Rich: Don't argue it. He says he has read it and did not see it. You produce it in evidence.

Mr. Stickney: I will produce it:

Questions by Mr. Kellogg:

Q. You do know that all these Companies make connections with the Union Stock Yards tracks, and all industries on their tracks, without any intermediate switching from your Company, do you?

A. I knew that those lines were delivering stock to the Stock Yards.

Q. And you knew that they were taking packing house products from the packing houses, didn't you?

A. That is, the tenant lines?

Q. Yes sir?

A. Were receiving stuff from the packing houses; yes sir.

Q. And you knew they were delivering to all other industries on the tracks? A. That the Stock Yards—

Q. Through the Stock Yards?

A. Yes; knew of the grain going to the Updike Elevator.

Q. In other words, you knew that these tenant lines were delivering grain to the Union Stock Yards Company, for the purpose of being delivered to the Updike Elevator?

A. Yes sir.

Q. You knew that they were delivering stuff to the cooperage establishment, to be delivered to them, didn't you?

A. I considered that went to the Stock Yards.

Q. You knew that they were delivering and receiving stock and packing house products, didn't you? A. Yes sir.

Q. You knew that they were delivering to the Union Stock Yards Company lumber, for the purpose of delivering to the lumber-yards, didn't you?

A. That is to lumberyards on the Stock Yards tracks?

259 Q. Yes? A. Yes sir.

Q. In other words, you knew that every tenant railroad was connecting with the Union Stock Yards tracks, without the intermediate switch to you, for the purpose of delivering and handling there, didn't you?

A. To tracks in the Stock Yards?

Q. To all industries on the Stock Yards tracks?

A. On the Stock Yards tracks; yes sir.

Q. But you did not know that any car that was delivered to the Union Stock Yards might have been received over some other road or go out on some other road, you say?

A. I did not know that any interchange was being made between railroads by delivering cars to the Stock Yards.

Q. You knew the Missouri Pacific had been connected there for years, didn't you? A. Missouri Pacific?

Q. Yes sir?

Q. Missouri Pacific have tracks in there.

Q. Yes sir; over the Stock Yards tracks?

A. Yes sir; inside of the yards.

Q. You knew they were delivering and receiving freight there at all times?

A. The Missouri Pacific has tracks inside of the Stock Yards.

Q. You knew they were delivering and receiving freight at all times through the Stock Yards tracks?

A. For whom?

Q. For everybody? A. For other roads?

260 Q. Yes sir.

A. No sir; I do not know it; no sir.

Q. You heard Mr. Grover testify to it, didn't you?

A. I said a while ago, this is the first time I knew of it.

Q. How long has he been in the employ of the Union Pacific?

A. During the last few days of this trial is where I learned of this; I did not know it.

Q. Your employes seemed to know it? Did you ever inquire to see whether it was being done, or not?

A. I did not suppose it was being done.

Q. Didn't think anything about it?

A. Had no reason to suppose it would be done.

Q. You are going to try and stop it now, are you? Now you gave it as your opinion on these contracts that they have no right to do it? Do you give that as a lawyer?

A. As my understanding of the contract.

Q. Your understanding of the contract?

A. Which appears very plain to me.

Q. You stated this morning that, before the Rock Island Company undertook to deliver a carload of freight to the Great Western on the 27th of April, or subsequently to that time, you never had received any letter, telegram, or request by that Company to allow direct interchange with the Great Western?

A. I made no such statement.

Q. You did not make any such statement? A. No sir.

Q. Very well. You said you never had received any such until after the attempt?

A. If I remember correctly, I was asked if I had had any correspondence with the Great Western in regard to making deliveries to the Rock Island; I have not had any correspondence with the Great Western.

Q. Didn't you say you had received no request from the Rock Island until after the attempt was made?

A. No request from the Rock Island?

Q. Yes?

A. I do not remember receiving any correspondence whatever from the Rock Island.

Q. You did not?—You do not? A. No sir.

Q. You do not recollect of receiving a telegram from them at least five or six days before that attempt was made, do you?

A. No sir. As I started to say to you this morning, after this transaction I received a note from someone, stating that they had attempted to make a delivery at South Omaha, and were prevented.

Q. But until the attempt was made, you never had received an communication from the Rock Island or Great Western on that subject, you say?

A. I had no correspondence with the Rock Island. A copy of a letter, as I remember it, addressed to some one, was sent to me; by whom I do not know.

Q. Didn't you receive a telegram from the Rock Island at least five days before that attempt was made, that they would undertake to deliver direct to the Great Western?

A. Not that I remember of.

Q. You have no recollection of it? A. No sir.

Q. You know, don't you, that the Union Pacific refused—that is, prior to the time the Great Western had its freight depot constructed—the Union Pacific refused to handle its freight same as it did the other companies?

Mr. Rich: Objected to as immaterial, and not proper cross examination.

Q. You knew that, didn't you? A. You say before?

Q. Before the Great Western had its freight house constructed so it could handle its own local freight into Omaha, you know that the Union Pacific refused to handle the Great Western's freight same as it did the Rock Island, Northwestern and Milwaukee, didn't you?

A. I do not know that the Union Pacific refused; but I see no reason why the Union Pacific wouldn't refuse.

Q. You know they did not handle it, do you not?

A. No; I do not; I do not know any such thing.

Q. You do not know anything about the management of the Company's business here in Omaha?

A. The Great Western?

Q. Yes—the Union Pacific? A. Yes sir.

Q. You do? A. Yes sir.

Q. Will you please post up, and find out how they were handling the Great Western freight same as they did the Milwaukee? A. Is that for your benefit that I post up?

Mr. Kellogg: That is all.

Mr. Rich: That is all.

Witness excused.

263 William Lee Park, called as a witness upon the part of the defendant, Union Pacific Railway Company, being duly sworn, testified as follows:

Direct Examination,

By Mr. Rich:

Q. State your name? A. William Lee Park.

Q. Do you hold some position with the Union Pacific road?

A. Yes sir.

Q. What is it? A. General Superintendent.

Q. How long have you held that position?

A. Sixteen months.

Q. How long have you been with the Union Pacific?

A. Thirty-one years.

Q. How long have you been with the Union Pacific in Omaha? A. Sixteen months.

Q. Did you give an instruction to Mr. Ware about preventing the direct interchange of cars or business between the Rock Island and the Great Western, or between the Great Western and the Rock Island, at Omaha, where the Great Western tracks connect with the Union Pacific, or at South Omaha where the Rock Island tracks connect with the Union Pacific? A. I did.

Q. At that time, did you know that this court had entered a decree allowing the Great Western, or the Mason City & Fort

Dodge, certain rights over the Union Pacific tracks between Council Bluffs and a point a mile and a half west of the Union Pacific passenger station in South Omaha?

264 A. I did in an indirect way.

Q. Had you ever seen that decree?

A. I had not.

Q. Did you understand that that decree gave the Great Western such rights as the Chicago & Northwestern, the Milwaukee and the Rock Island had over the same track, by virtue of contracts entered into between those roads and the Union Pacific?

Mr. Kellogg: That is immaterial, what he understood, as not controlling in this case.

A. That was my understanding.

Q. Had you examined those contracts? A. I had.

Q. You had examined the three contracts referred to?

A. Yes sir.

Q. Did you ever make any inquiries prior to the time you made this order, as to the custom prevailing in Omaha or South Omaha with reference to direct interchange of business between any of the connecting roads or tenant lines?

Mr. Kellogg: That is hearsay, incompetent and irrelevant.

A. I had talked with some of the subordinate officers relative to that matter.

Q. And did those officials, these subordinate officials, report to you the custom obtaining and the practice under those contracts, with reference to a direct interchange of business between the tenant roads, or between the tenant roads and any other roads having a direct connection with the Union Pacific tracks?

Mr. Kellogg: Objected to on the same ground, as hearsay, and incompetent.

265 A. Verbally, yes sir.

Q. And from your investigations, what did you learn, if anything, with reference to interchange of cars direct between tenant lines of the Union Pacific, or between tenant lines and other lines that had physical connection with the Union Pacific?

Mr. Kellogg: That is objected to as pure hearsay.

Q. Answer the question?

A. I understood that there were certain privileges accorded to the tenant lines between certain limits.

Q. Did those privileges include a direct exchange of cars

between the tenant lines, or between the tenant lines and other roads having connection with the Union Pacific?

Mr. Kellogg: Same objection, pure hearsay.

A. They did not.

Q. After coming to Omaha as General Superintendent, did you examine the contracts with reference to the rights of the tenant lines under those contracts? A. I did.

Q. Did any of the tenant lines, prior to the attempt of the Rock Island to connect directly with the Great Western, and the attempt of the Great Western to connect directly with the Rock Island, in the month of April—did any of the tenant lines ever make any request of you to be allowed to make such direct exchanges, or did any of the tenant lines ever attempt to make such direct exchanges, either in Omaha or South Omaha?

A. Not to my knowledge.

266 Q. At the time you gave this order to Mr. Ware to prevent this direct exchange, did you know that such order would be a violation of any decree or injunction order made or entered by this court? A. I did not.

Q. In giving that order, was it your opinion as an official of the Union Pacific Railroad that, under the contracts, the roads had no right to make the proposed exchange?

A. It was.

Q. Are you still of that opinion? A. I am.

Q. Personally, are you familiar with the method of receiving and delivering cars and freight from the various tenant lines for delivery in the City of Omaha?

A. I am not.

Q. As an official of the Union Pacific, in examining the contracts with the tenant lines, you may state how you construed those contracts as to the respective rights of the parties?

Mr. Kellogg: Objected to as incompetent and immaterial; construction of contracts is a question for the Court.

A. From an operating point of view, I understood that the contract permitting the tenant lines to operate over a certain portion of the Union Pacific gave them five separate and distinct privileges; First to run their trains over the main and passing tracks of the Union Pacific between its eastern terminus at Council Bluffs and a point about one and a half miles south or southerly from the South Omaha passenger station,

267 for a stipulated price, and for a certain length of time; that was to include the tracks that were established, the main and passing tracks that were established at the time the contract was made, and such main and passing tracks as thereafter might be located or established. Second, I understood that the tenant lines would be permitted to have a

connection with the Omaha Union Depot. Third, I understood that they should have a connection with the spur or side tracks leading to the lower yard of the Union Pacific in Omaha. Fourth, That they should have tracks in Omaha upon which to receive cars to be delivered or received from the Union Pacific. Fifth, They should have a connection at South Omaha with the Union Stock Yards Company; and in connection with that a certain piece of ground upon which they might build tracks aggregating 3,000 feet, for the purpose of setting out cars at South Omaha.

Q. What do you mean by a connection with the track connecting with the lower yards?

A. We have a system of tracks leaving the main line of the Union Pacific west or south of the depot, and leading to the Union Pacific shops, Union Pacific freight depot, and other industries in that part of the city.

Q. Did the tenant Companies ever exercise that optional right of building a track at least 3000 feet in length at South Omaha, for convenience in the storing and receiving or delivering of cars? A. They did not.

Q. Did the Union Pacific ever furnish those contracts for the various tenant roads? A. They did.

268 Q. Were you familiar with the contract entered into in 1888 between the Stock Yards Company and various other roads delivering to the Stock Yards Company, with reference to the Stock Yards acting as a switching intermediary?

A. I have read it.

Q. The Union Pacific was a party to that contract, was it?

A. They were.

Q. You have not that contract with you here?

A. Not in my possession.

Q. Did you ever know, or has it ever been reported to you, that there were direct exchanges of cars being made between railroads and railroads through the Stock Yards track and through the Stock Yards as a switching intermediary?

A. Only recently in a vague way.

Q. Do you remember when you first heard it; or whether it had any connection with the present inquiry or not?

A. It had connection with the present inquiry.

Q. Did you ever hear it prior to that time? A. No sir.

Q. As an official of the Union Pacific, had you known that, would you permit without protest that exchange to be made in the same manner indicated in the preceding question, by the tenant roads of the Union Pacific?

A. My understanding of the contract would not have permitted me to have permitted it?

Q. Or consented to it?

A. Or consented to it. I would have referred it to higher authority.

269 Q. Have you as an official of the Union Pacific received protests within a recent period of time from the tenant roads of the Union Pacific, with reference to any congestion or impeding of traffic over the Union Pacific line between Council Bluffs and South Omaha?

A. Complaints of that character have passed through my hands frequently. Some have come to my personal attention, and others have been handled by my chief clerk.

Q. Do you remember whether any of those complaints have come from the Mason City & Fort Dodge or Chicago Great Western?

A. I could not say positively. I would like to add to that, if you will permit, that such complaints would not be apt to come to me personally; they would be more apt to be handled by the respective division superintendents, and, after a long series of complaints had reached the respective general superintendents they might occasionally get together on it; and, further, that at a meeting of some of the managing officers of the tenant lines, such delays were spoken of in a general way, and it was discussed as to how they might be prevented.

Cross Examination,

By Mr. Kellogg:

Q. You say you gave directions to Mr. Ware not to allow the Great Western to make direct connection with the Rock Island road? A. Making interchange.

Q. Making interchange, at their connection near Albright?

A. Yes sir.

Q. You knew there had been a decree entered at that time, didn't you? A. In a vague way.

270 Q. You knew the Great Western obtained its rights through a decree of the Courts, didn't you?

A. I knew that they had; yes sir.

Q. Did you inquire into the nature of that decree and the injunction, before you gave the directions?

A. I had some talk with the different officials of the road.

Q. With Mr. Mohler? A. Mr. Mohler.

Q. Did he ask you to make that—tell you to give that direction to Mr. Ware?

A. No; I think not. I think we talked it over in a general way, and I went over the contracts, and decided, I think, on my own volition, that it was the proper thing to do.

Q. Mr. Mohler knew you were going to do it, didn't he?

A. Perhaps he did; yes.

Q. It was agreed between you that you would do it, wasn't it? A. Not necessarily; no.

Q. That was the talk, wasn't it?

A. We talked along that line; yes.

Q. And he understood you were going to refuse to allow them to use it? A. He probably did.

Q. You say you read over the contracts? Did you read over the decree at that time? A. No; I did not.

Q. You did not take pains to read over the decree?

A. I did not have the decree in my possession, and I understood that it gave the roads the same rights as the contracts.

Q. You have always understood that all the roads had a right to connect with the Union Stock Yards tracks, without any intervening switch over the Union Pacific?

A. I so understood their contract.

Q. They have always made such connections? A. Yes sir.

Q. For the purpose of delivering any freight to the Union Stock Yards Company, or to any industry on the track of the Union Stock Yards Railway Company?

A. That is my understanding; yes sir.

Q. Whether the Union Stock Yards Company owned the industry or not? A. Yes sir.

Q. All industries on those tracks? A. Yes sir.

Q. The tenant roads have had a right to connect with?

A. So I understand.

Q. Did you know it gave the Great Western right to connect with the Rock Island in the same manner?

A. No; I did not.

Q. You did not look into that? A. No sir.

Q. Then, you are not prepared to give an opinion that the Great Western has not that right?

A. Not from my own knowledge; I have not read the decree.

Q. Don't you think it would be a matter of precaution, before you violate an injunction, to read it?

A. Certainly; if I had anticipated that I was going to violate an injunction, I would have done so.

Q. I think you would. You say you have never known of an exchange of cars between railroads through the Union Stock Yards tracks until lately? A. No sir.

Q. How lately have you known of it?

A. I should say about ten days.

Q. About ten days? You learned that the Missouri Pacific has been doing it, didn't you?

A. Not any railroad in particular.

Q. Well, all roads, then?

A. I have heard, as I say, in a vague way, that there has been some arrangements there. From our point of view—(interrupted)

Q. That is, heard of arrangements for exchanging cars through the Union Stock Yards tracks?

A. Not in accordance with our contract with the tenant lines.

Q. You heard that had been going on for years, didn't you?

A. No; I did not hear that.

Q. You did not hear that?

A. In fact, the first positive statement I have heard to that effect was from Mr. Stickney to-day.

Q. You heard Mr. Crawford testify here, didn't you?

A. No.

Q. You did not hear him testify? A. No.

Q. Now, as to complaints; there are complaints about delays of freight all over the country? Isn't it a fact, all over the country to-day, there are complaints of delays and congestion of traffic on the railroads?

A. Complaints are incident to the operation of railroads.

Q. Has there not been in the last year, last six months, complaints of delays of shipments on your line of road from here to the Pacific? A. Yes; they are always there.

273 Q. Always; and that is so on all railroads?

A. I presume so; I have not been connected with any other road except the Union Pacific.

Mr. Kellogg: That is all.

Mr. Stickney: That contract that you speak of with the Union Stock Yards Company, are you going to produce it?

Mr. Rich: Yes sir.

Mr. Stickney: Haven't you got a copy of it?

Mr. Rich: No sir—Mr. Park says he has a copy of it in his own office. I didn't know there was more than one copy in existence. We will have it here.

Mr. Stickney: I would like to see it.

Mr. Rich: That is all just now, Mr. Park. I want to recall Mr. Park again in connection with some other documents.

274 J. M. Henry, called as a witness upon the part of the defendant, Union Pacific Railroad Company, being duly sworn, testified as follows:

Direct Examination,

By Mr. Rich:

Q. What is your business?

A. Assistant yardmaster at South Omaha.

Q. For the Union Pacific? A. Yes, sir.

Q. How long have you held that position?

A. About twelve years; that is, been down there 16

years, except I was in here four years; there would be 16 years, maybe.

Q. You have been at South Omaha continuously for twelve years?

A. No sir; I was down there about eight, and was in here about four and a half, down there about four again.

Q. You have been there four years now continuously?

A. Yes sir.

Q. You are familiar, are you, with the tracks in South Omaha? A. Yes sir.

Q. You may look at the map that has been identified as Exhibit 1 which shows something like 14 parallel tracks extending in a general north and south direction, beginning immediately south of N. street, and extending southerly past Q street and P street, and a portion of them on south. You may state whether the Union Pacific main lines eastbound and westbound are among those tracks? A. Yes sir.

Q. Can you tell opposite Q Street about how many tracks, as shown by this map, are east of the east bound Union Pacific main line?

275 A. None right at Q Street.

Q. None right at Q Street?

A. There is none.

Q. Then, the next track to the eastbound main line is the westbound main line, lying west, is it? A. Yes, sir.

Q. This map shows a cross-over, extending from about the middle of the group of tracks you have just described, in a northwesterly direction over onto what are admitted to be Stock Yards tracks. I will ask you if that cross-over is the one on which deliveries are made from the various tenant lines or roads of the Union Pacific into the Stock Yards?

A. At N. Street, it is; at N Street.

Q. Now, west of the westbound main line of the Union Pacific, what is the next track to that?

A. What is named as a passing track.

Q. What is it used for?

A. The Northwestern to receive stuff from the Stock Yards.

Q. What is the next track west of that track?

A. The next one is the long track; we call it the long track.

Q. Next to the westbound is the long track?

A. Yes sir; the long track.

Q. What is the track east of it?

A. That the Northwestern uses it to receive stuff.

Q. What is the next track west of the one used by the Northwestern?

A. That is the passing track that the Milwaukee uses to receive stuff from the Stock Yards.

276 Q. West of that track used by the Milwaukee, what track is that?

A. No. 5 Track; that is used by the Union Pacific and Great Western jointly to receive stuff from the Stock Yards on.

Q. And west of that track what track is there?

A. No. 4 track.

Q. What is that used for?

A. To receive from the Stock Yards on for the Rock Island.

Q. In case the Northwestern road should bring cars of freight to South Omaha for the Stock Yards Company after arriving at N. Street, how would those cars be handled in order to effect a delivery to the Stock Yards?

A. They would shove them across all of those tracks onto a cut off into the Stock Yards track which they have to receive upon, the receiving track.

Q. After those cars had been unloaded, and were empties, for delivery back to the Northwestern, where and how would they be delivered?

A. As a general thing of late, the Northwestern receives very near all of their empties at their own yard, north, I think; but they receive all the meat and stuff on this track.

Q. Where are the Northwestern yards with reference to the Stock Yards?

A. That is away north, away north.

Q. After the Northwestern constructed those yards, where would it receive the empty stock cars?

A. On its track, its transfer track, next to our west bound main line.

277 Q. In case of packing house products from any one of the packing houses located near the Stock Yards for shipment over the Northwestern, where would those cars be delivered to the Northwestern, and by whom?

A. The Union Stock Yards Company would deliver them on its long track, next to the westbound main line.

Q. You say the next track is used by the Milwaukee?

A. Yes, sir.

Q. In bringing stock into South Omaha, would the Milwaukee handle the cars same as the Northwestern?

A. Yes sir; only they receive their empties back.

Q. After the cars had been unloaded, the empties would then be placed on the second track from the westbound main line of the Union Pacific, to be picked up by the Milwaukee?

A. Yes, sir.

Q. You say the next track to that is used jointly by the Union Pacific and the Great Western? A. Yes, sir.

Q. What use does the Union Pacific make of that track?

A. Receiving all the meat or empties that go from the Union Stock Yards Company.

Q. That is—or any freight that is for shipment west over

the Union Pacific would be delivered to the Union Pacific on that third track?

A. Yes sir.

Q. Any freight for shipment by the Chicago Great Western received from the Stock Yards as a switching intermediary, would be received on the same track? A. Yes, sir.

278 Q. And the Great Western would pick up from that track? A. Yes, sir.

Q. Several other railroads use that track from the Union Pacific westbound main line, used by the Rock Island?

A. Yes, sir.

Q. Did you know that the various railroads having a right to use the Union Pacific tracks there, to-wit: the Great Western, the Milwaukee, the Northwestern, the Rock Island, the Missouri Pacific, and the B. & M., had been making exchanges directly with each other of cars through the Stock Yards tracks, the Stock Yards doing the switching? A. No, sir.

Q. When did you first hear that that was being done?

A. I heard Mr. Stickney say it awhile ago.

Q. Did you ever know that whole trainloads of grain had been transferred from other roads through that Stock Yards track to the Great Western road, picked up by the Great Western road, and taken up to the elevators?

A. I did not. I have seen—I saw grain come that way through the Stock Yards, but supposed it came from the Uplike elevator going east.

Q. But you do not know that any such exchanges had been made between the Great Western road and any other road having a right to run in there? A. No, sir.

Q. What did you have to do with preventing the Chicago Great Western from running an engine and a car off of the Union Pacific tracks over the connection between the Union Pacific and the Rock Island tracks, onto the Rock Island tracks near Q Street?

279 A. I informed the men that asked to go through onto the Rock Island that I could not let them go without orders from my superior officers, as I had instructions not to let the Great Western get down onto the Rock Island main line.

Q. When had you received those instructions, before you refused to let them go? How long before?

A. I could not say exactly; perhaps a week.

Q. And, when they finally presented themselves, and wanted to go through there, you refused to let them go through?

A. Yes sir.

Q. Did you have the switches locked? A. I did.

Q. Did anyone connected with the Chicago Great Western

or on that car make any attempt to break that switch open, or break any part of it?

A. The train master, I understand it was, of the Great Western, broke the lock on one of the switches.

Q. One of the switches that was necessary to throw in order to enter upon the Rock Island tracks? A. Yes sir.

Q. Were you there when he broke it? A. I was not.

Q. How soon afterwards did you get there, if at all?

A. Perhaps a couple of minutes; I wasn't I don't think, a block away.

Q. What further did you do, or how did you prevent them from getting through?

A. I stood there at the switch and held it; I just stood over it.

Q. So that no one could throw it? A. Yes sir.

280 Q. How long did the Chicago Great Western yardmaster and the train crew stay there when they made that attempt?

A. The Chicago Great Western yardmaster was not there,

Q. O, it was the Rock Island yardmaster? A. Yes sir.

Q. As you understand it?

A. As I understood it; I should judge they were there a couple of hours.

Q. Well, this was a Great Western engine and car, was it not? A. Yes sir.

Q. You do not know whether it was Great Western employees in charge of it, or not? A. The same men—

Mr. Kellogg: It was either Great Western, or Mason City & Fort Dodge; no question about that.

Mr. Rich: It is admitted the employees in charge of the engine and car were employees of either the Chicago Great Western or the Mason City & Fort Dodge.

Mr. Kellogg: Both, you may put it.

Mr. Rich: Or both.

Q. How long did they stay there?

A. I think it was a couple of hours.

Q. Did you stand there and guard that switch during that time? A. I did.

Q. And you refused to allow it to be thrown? A. I did.

Q. Did you have anyone there to help you in the event they tried to use force? A. One switch tender.

281 Q. They then went away? A. Yes sir.

Q. Have they ever made that attempt since?

A. No sir.

Q. During the time you have been in South Omaha, as yard-

master, did you ever know the Missouri Pacific, B. & M., Northwestern, or Milwaukee, to make a direct delivery over the Union Pacific tracks to the Rock Island tracks, or attempt to do so, or ask permission to do so? A. No sir.

Q. Do you know where the Burlington track comes into the Union Pacific track that the Burlington uses in running onto the Union Pacific track, and then south to Gilmore Junction? A. Yes sir.

Q. Where does that track connect with the main line of the Union Pacific?

A. Between N and M Streets, South Omaha,—or N and O Street, South Omaha—N and O.

Q. During the time you have been in South Omaha, did you ever know the Great Western, the Northwestern, Milwaukee, Rock Island, or Missouri Pacific, to make a direct connection or enter upon the Burlington track with cars of freight or engines where it connects with the Union Pacific main line?

A. No sir.

Q. Did any of those roads ever make the attempt to do so, or ask permission to do so, so far as you know?

A. No sir.

Q. Do you know where the Missouri Pacific track in South Omaha connects with the main line of the Union Pacific?

A. Yes sir.

282 Q. Where? A. Between N and O Streets.

Q. Did you ever know the Northwestern, the Rock Island, the Milwaukee, the Burlington or the Chicago Great Western to enter directly over the Union Pacific track upon this Missouri Pacific track with engines or cars, for the purpose of delivering cars or freight? A. No sir.

Q. Did you ever know them to make an attempt to do that?

A. No sir.

Q. Did you ever know of them asking permission so to do?

A. No sir.

Q. Do you know of your own knowledge whether all of the packing houses are located on Stock Yards tracks?

A. Yes sir.

Q. They are, are they? A. They are.

Q. Does any other railroad entering in South Omaha except the Stock Yards railroad, have tracks leading to any of the packing industries?

A. The Rock Island has built a spur in the south end of Swift's yard.

Q. Has any other road any connection? A. No sir.

Q. Do you know of your own knowledge what character of business is transacted on that spur? Do you know whether the Rock Island receives packing house products on that spur?

A. They do not.

Q. Do you know what business is transacted on it?

283 A. I have seen them set cars of wood there, and some cars of coal, for those packing houses.

Q. You have never seen any other business than that transacted? A. No sir.

Q. Have the Stock Yards any connection between those tracks and this spur built by the Rock Island into the south end of Swift's plant? A. No sir.

Q. The only way in which a stock yards engine could reach that spur would be by running over Union Pacific tracks?

A. Yes sir.

Q. In case of the Northwestern, Milwaukee, and Rock Island, how long have they been receiving cars on those three tracks, just west of Q and P Streets, that you have described?

A. Ever since they have been coming out there.

Q. Do you remember when they began that?

A. I do, but I do not remember the year.

Q. You remember the circumstance?

A. The time; yes sir.

Q. But you do not remember the year? A. Yes sir.

Q. Is it possible for those railroads to make exchanges of cars between the railroads on the Stock Yards track, without your knowing it? A. Yes sir.

Q. What is the condition at the present time with reference to the crowding of business on the tracks there in South Omaha, say between L and Q or S street?

A. Very congested there, sometimes; quite crowded.

284 Q. Is there any more room there to put tracks?

A. There is not.

Q. Is there any exchange at South Omaha between tenant lines of cars where the switching is done by the Union Pacific?

A. Not that I know of.

Q. In case the Chicago Great Western had a car for the B. & M., did you ever know of the delivery or exchange being made at South Omaha? A. No sir.

Q. Do you know of any deliveries or exchanges of cars between any of the six roads I have named, being made at South Omaha; that is, the Northwestern, the Rock Island, the Milwaukee, the Missouri Pacific, the Great Western, and the B & M? A. No sir.

Q. So far as you know, those exchanges are made some place else, or in some other way? A. Yes sir.

Q. In case the Great Western, the Rock Island, the Milwaukee, or the Northwestern bring a car of freight to South Omaha destined for some industrial on a Union Pacific track or to be loaded on a team track, or to be unloaded at the Union Pacific freight house, how is that car unloaded in South Omaha?

A. It is delivered on a track to the Union Pacific, what is known as the short passing track, call it our transfer track.

Q. Where is that track? A. Between N and M Streets.

Q. And where is it with reference to the westbound main line of the Union Pacific?

285 A. Directly next to the westbound main line of the Union Pacific.

Q. West of it?

A. West of it, in front of the passenger depot.

Q. And all freight brought in by anyone of those four roads for delivery in South Omaha outside of the Stock Yards tracks is delivered to the Union Pacific on that track? A. Yes sir.

Q. And it is switched by the Union Pacific to the freight house or team tracks or any industrial located on Union Pacific tracks? A. Yes, sir.

Q. Do any of the six roads using the Union Pacific tracks, being the roads I have just named above, deliver freight of any kind in carload lots or less than carload lots, to the freight station, team tracks, or to any industrial upon Union Pacific tracks, directly without being switched by the Union Pacific?

A. None except the B. & M., which delivers cars at Albright to industries, and at Avery to the brickyard.

Q. You do not know by what agreement that is done?

A. No sir.

Q. But no deliveries by any of those six roads are made in South Omaha except through the Union Pacific or through the Stock Yards? A. No sir.

Q. Have any of those six roads ever attempted to make any deliveries directly to the Union Pacific freight house, industries on Union Pacific tracks, or Union Pacific team tracks?

A. None except the B. & M., as I stated.

Q. I say, in South Omaha? A. Not in South Omaha.

286 Q. None of them? A. None of them.

Q. And have they ever attempted to do that?

A. No sir.

Q. And have they ever asked permission to do that, so far as you know? A. No sir.

Q. Do you know anything about a decree of this court giving the Great Western rights over the Union Pacific tracks? Did you ever hear of it? A. No sir.

Q. Never heard of it? A. No sir.

Q. If you had heard of it, and had known that preventing the Great Western from going onto the Rock Island tracks would have been a violation of that decree or the injunction you would not have knowingly violated that injunction or the decree? A. No sir.

Q. And you had nothing of that sort in your mind at the time you refused to allow them to pass over the tracks?

A. No sir.

Q. You did it simply because you had been ordered to do so by a superior? A. Yes sir.

Q. And, not knowing of the injunction or the decree, you meant no disrespect to the Court? A. No sir.

Q. In preventing that connection? A. No sir.

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Cross Examination,

By Mr. Kellogg:

Q. You received your orders from where?

A. From Mr. Crawford, general yardmaster.

Q. You heard that the Great Western had litigation or a suit going on to get onto the tracks, didn't you, some years ago? A. The Rock Island tracks?

Q. No; the Union Pacific tracks? A. Yes sir.

Q. You knew that the suit was going on for some time in the United States Court?

A. I did not notice with regard to it.

Q. You knew that the Great Western had by the Court been given the right to use the Union Pacific tracks?

A. I did not know that; I supposed they had. All I know is just my orders, that the Great Western was coming over.

Q. And you simply obeyed those orders?

A. Yes sir; treated them the same as I did the rest.

Q. At South Omaha you say there were cars of grain going to the Great Western terminals, freight terminals, that you supposed all come from the Updike Elevator? A. Yes sir.

Q. Was it a common thing for grain to go into the Great Western terminals there since they have been built off the Union Stock Yards tracks?

A. To go over the transfer No. 5 track.

Q. Yes? A. Yes sir.

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Q. The Great Western engine came out frequently, and got grain cars there? A. Cars of grain.

Q. All the Union Stock Yards tracks were by the transfer tracks?

A. By the track that is set aside to receive stuff on from the Stock Yards.

Q. But the Union Pacific did not switch it? A. No sir.

Q. And you would not know about any company connecting with the Union Stock Yards tracks and delivering cars there—you do not know where they are going, do you?

A. No sir.

Q. It is no part of your business to know it? A. No sir.

Q. You know that all of these tenant roads, and the Great Western included, deliver freight to the Union Stock Yards tracks, and to all industries on those tracks, without any intermediate switching by the Union Pacific, don't you?

A. They do.

Q. And in delivering all this freight, they run onto the tracks of the Union Stock Yards Company with their own engines? A. Yes sir.

Q. But, in receiving the meat and other—some other freight from the Union Stock Yards, they receive it on those receiving tracks which are set aside, and which you have described? That is correct, is it?

A. The Union Pacific furnishes; yes sir.

Questions by Mr. Rich:

Q. In answer to question of Mr. Kellogg's, you said
289 that you saw grain cars go into the independent elevator yards? Do you mean to say that?

A. Independent elevators yards?

Q. Yes; that is the Stickney elevators up over the hill?

A. Not the independent elevator; Updike, I understood — Updike.

Questions by Mr. Kellogg:

Q. You saw the Great Western engines getting cars off of the tracks there at the Union Stock Yards, did you? grain cars?

A. Off the tracks that we set aside; that is, Union Pacific set aside?

Q. Yes sir? A. Yes sir.

Q. Those tracks are tracks that were set aside to receive freight from Union Stock Yards tracks, aren't they?

A. Yes sir.

Q. You knew those grain cars came off the Union Stock Yards tracks? A. Off the Union Stock Yards tracks?

Q. The Great Western engine came there, and got them?

A. Yes sir.

Q. And took them away? You have seen that a great many times? A. I have seen it often.

Q. During the last year?

A. Yes sir; ever since the independent elevator has been open.

Q. Of course, that is not connected with the independent elevator?

A. The Updike, from Updike; the Stock Yards deliver them from Updike, as I understood.

Q. But you did not know where those cars came
290 from, did you?

A. Of course I was satisfied that they came from Updike.

Q. Instead of the independent elevator?

A. It couldn't come from the independent.

Q. No; but they were going to the independent, weren't they? A. I couldn't say as to that.

Q. You do not know? A. Where they were going.

Q. You do not know where they came from?

A. I surmised they came from Updike.

Q. That was just a surmise of yours?

A. Came from the Updike, yes sir.

Q. That has been been going on for a year or more?

A. I think it has. About a year, I guess, Updike has been built there.

Questions by Mr. Rich:

Q. All of the grain for the Updike Elevator has to go in and out on that Stock Yards track, doesn't it? A. Yes sir.

Q. And, if the Updike elevator wants to ship ten cars of grain east over the Northwestern road, the Stock Yards engine brings out the ten cars, and sets them on this Northwestern track west of Q Street, west of the main line?

A. East of Q Street; it is this side of Q Street.

Q. This side of Q Street? A. Yes.

Q. The track you have already described? A. Yes sir.

Q. If the Updike people want to ship ten cars of grain over the Rock Island, the Stock Yards engine would bring
291 the ten out, and set them on the Rock Island track there? A. Yes sir.

Q. If the Updike people want to ship over the Milwaukee ten cars the Stock Yards engine would bring out the ten cars, and put them on the Milwaukee track?

A. Yes sir.

Q. And, if they want to ship over the Great Western east, the Stock Yards engine would bring out the ten cars, and set them on the track that is used jointly by the Great Western and the Union Pacific? A. Yes sir.

Q. And then the Milwaukee engine, the Northwestern engine, the Great Western engine, the Rock Island engine, would pick up those ten cars off of the tracks where they had been set? A. Yes sir.

Q. And go on east with them over the Union Pacific tracks?

A. Yes sir.

Q. When you saw it done, you did not know where that grain was going to? A. No sir.

Mr. Rich: That is all.

Mr. Kellogg: That is all.

A recess was taken until Friday, June 8th, 1906, at 10 A. M., after which time the following proceedings were had, viz: after which time the following proceedings were had, viz:

292 Friday, June 8, 10 A. M.

Pursuant to adjournment parties met with their representative counsel and the following proceedings were had:

Cross examination of Mr. Ware continued:

Q. I believe you stated, Mr. Ware, that until very recently, within a few days, you had no knowledge that the Union Stock Yards railroad was switching and transferring cars direct between railroads at South Omaha?

A. Until this trial was talked of, yes sir.

Q. Don't you know that there had been a tariff in existence since 1896, whereby they have advertised and published that they would switch and transfer cars between the tracks of different railroads at South Omaha?

A. Not between the tracks of railroads who have a physical connection at South Omaha?

Q. Well, if railroads had a physical connection at South Omaha, themselves, of course they would not need any transfer through the Union Stock Yards would they?

A. There are certain roads at South Omaha which have a switch track—but not—

Q. I am talking about the Stock Yards switch tariff; hasn't the Stock Yards Company had a switch tariff whereby they state that they will transfer between all railroads at South Omaha? A. Not all railroads as I understand it.

Q. Well, is there any limit on the tariff?

A. The Stock Yards Company has a right, as I understand the contract to switch—

293 Q. I am not talking about the contract, I am asking about tariffs?

A. Well, tariffs, then, I am talking about the tariffs then, instead of contracts.

Q. Well, what do you know about it?

A. I understand that the Stock Yards had a tariff for switching between certain lines at South Omaha, but not all lines.

Q. Does the tariff limit it to certain lines or is it general?

By Mr. Rich: Objected to as incompetent, irrelevant and immaterial, the published tariff shows for itself.

A. All the knowledge I know of is the tariff.

Q. Well, the tariff did not discriminate between railroads, did it?

By Mr. Stickney: You have a knowledge of the tariff, you have had a knowledge of the tariff?

A. I have seen the tariff, yes sir.

By Mr. Kellogg: Q. It has been in existence for ten years hasn't it? A. It was made in 1896, I think.

Q. Well, now it does provide "all commodities switched from the transfer track of one railroad direct to the transfer

track of another one dollar per car, such cars when empty to be returned free," does it not?

A. That is the way the tariff reads. I don't understand they have switched for all roads through at South Omaha.

Q. Well, is there any limitation in the tariff?

A. There may not be in the tariff, but I think there has been in the practice; it is possible they have done switching that I might not know of.

Q. Now the Union Stock Yards railroad is a railroad company, isn't it? A. A railroad company?

Q. Yes sir?

A. I understood it was a stock yards company.

Q. Well, isn't it organized under the railroad laws of Nebraska, and operated as a railroad company?

A. I don't know about the organization or the operation.

Q. It has thirty or forty miles of track, hasn't it?

A. I don't know how much track it has.

Q. It has a large amount of track?

A. Considerable trackage, yes sir.

Q. Now does the tariff also provide as follows: "All empty cars switched from the transfer tracks of one railroad direct to the transfer tracks of another, fifty cents per car?"

A. Yes sir, I think it so reads.

Q. Well, now, that tariff has been in force for ten years, hasn't it?

A. I think the tariff there shows that it went into effect in 1896.

Q. It does not discriminate between railroads does it?

A. I can't say that it does.

Q. Now that was long before the Great Western came in, wasn't it? A. That the tariff went into effect, yes sir.

Q. The Great Western did not commence to do business until the fall of 1903, isn't that correct?

A. I don't know the date, but it is along about that time.

Q. Then that practice was in existence long before the Great Western company went in there?

A. The tariff was in effect, yes sir.

Q. And whatever was done under it was done long before the Great Western came in? A. Yes, I believe so.

Q. I show you exhibit No. 6, is that the Union Stock Yards and Railroad switching tariff in effect May 1, 1896 and since that time?

A. I don't know of a later tariff.

Q. Well, then, this is the one that has been in effect since May 1, 1896?

A. The tariff so states that it is in effect since May 1, 1896, it is possible there is a later tariff.

Q. If there is no later tariff this one is in effect?

A. Yes sir.

By Mr. Kellogg: I offer in evidence Exhibit 6 as a part of the examination of Mr. Ware. Same is received without objection and attached hereto and made a part of these proceedings.

Re-direct,

By Mr. Rich:

Q. Mr. Ware, at the time the Stock Yards switching tariff took effect on the 1st day of May 1896, the Chicago Great Western had not built into the City of Omaha or South Omaha had it? A. No sir.

Q. And it had no rights over the Union Pacific tracks from Council Bluffs to South Omaha, of course?

A. Not at that time.

296 Q. On May 1, 1896, did the Burlington road have an exchange track in South Omaha whereon exchanges could be made between the Burlington and Union Pacific?

A. To the best of my knowledge, no sir.

Q. On that date did the Fremont, Elkhorn & Missouri Valley have any delivery or receiving tracks in South Omaha for the exchange of cars between the Union Pacific and the F. E. & M. V.? A. No sir, I think not.

Q. You may state whether or not the switching tariff of the Stock Yards effective May 1, 1896, followed a contract entered into on the 27th day of April, 1896, between the Stock Yards Company, the Union Pacific Railroad Co., the F. E. & M. V. and the B & M. R. R.?

A. Yes sir, it is my understanding it did.

Q. You may examine Exhibit 7 and state whether or not that is a copy of the contract referred to in the last preceding question? A. Yes sir.

By Mr. Rich: Defendant offers in evidence Exhibit 7. Same is received without objection and attached hereto and made a part of these proceedings.

Q. Were your duties such, Mr. Ware, in connection with the Union Pacific, that you would have knowledge of that contract and what was done under that contract, and what the custom and practice was under the switching tariff of May 1896? A. No sir.

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Re-cross Examination.

Q. This provides that loaded cars switched from transfer track of one railroad direct to transfer track of another, switching charge to be one dollar per car, empty car returned free, does it not?

By Mr. Rich: Objected to as not the best evidence, the contract itself shows.

A. The contract so states, yes sir.

Q. You knew about that contract did you? A. Yes sir.

Q. Have known it for ten years?

A. I don't know how long I have known it exactly, not ten years, no sir.

Q. A long time.

A. I have not had any occasion to know the contents of that contract until recent years.

Q. Well, a number of years you have known it?

A. No, I don't think I have known of that contract for a number of years.

Q. When did you learn of it? A. Just recently.

Q. It is still in force, is it?

A. So far as I know.

Q. Well, now, you say the F. E. & M. V. had no exchange track with the Union Pacific at the time that tariff was put in force in 1896?

A. That was my understanding is the reason that contract was entered into.

Q. Well, when did they build their connection with the Union Pacific?

298 A. I am unable to say.

Q. You don't know? A. No sir.

Q. Well, it has been in existence several years, hasn't it?

A. Yes sir.

Q. But you don't know when? A. No sir.

Q. When did the Chicago, Burlington & Quincy build their connection? A. I don't know.

Re-direct Examination.

Q. The C. B. & Q. although they had a connection at South Omaha have no delivery and receiving track now, have they for exchange of business between the Union Pacific and the C. B. & Q.? A. No sir.

Q. And the same is true of the F. E. & M. V. at South Omaha at the present time? A. It is.

Witness excused.

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Witness Park Resumed.

By Mr. Rich:

Q. Will you describe or define what is meant in railroading by a congestion of the tracks?

A. A condition which causes delay to traffic.

Q. Does that condition have reference solely to the number of trains that pass over a given distance on a track?

A. Not necessarily.

Q. In case the trains of the Union Pacific and all of the tenant lines pass directly over the Union Pacific from the west end of the bridge to South Omaha, both east and west, would the number of trains in operation at this time under these conditions cause a congestion? A. It would not.

Q. Then at the present time the Union Pacific can take care of all of the traffic over its line between the points named provided that traffic can be handled so that it will move in a continuous manner or in sequence?

A. If it is within the power of those having control of that particular piece of track to move the trains as they direct, we have not as yet reached the capacity of the track.

Q. On an average and represented by minutes, how many trains pass over the Union Pacific tracks between Council Bluffs and South Omaha each twenty-four hours?

A. On an average of about two hundred and twenty-four.

Q. Well, but in minutes, a train about every how many minutes?

A. That would be ten trains an hour or one train every six minutes.

Q. You refer to tracks now both ways, east and west?

300 A. In both directions, yes sir.

Q. Where the block system is used as it is between Omaha and South Omaha, what is the effect of a stoppage of trains in any particular block?

A. Under the automatic electric system of blocking the road, which is in effect in this territory, a train meeting with an obstruction in a certain block would cause the signal immediately in the rear to go to the stop position, which, in turn, would stop a train in the following block; that in turn would stop the train in the following block, and so on inside the limits.

By Mr. Stickney: You mean the preceding train in the block?

A. No, I was figuring on the double track system of blocking, the blocks—

Q. Well, the train going west, if it stops on one block, that brings the signal in the rear of it,— A. Yes.

Q. To stop, and that—

A. Stops the train following in the same direction.

Q. The succeeding train?

A. The following train, yes sir.

By Mr. Rich:

Q. Under the custom and practice prevailing in the yards now between Council Bluffs and South Omaha

where the tenant roads are not allowed to make direct connection, tenant lines that connect directly with the Union Pacific, but owing to the manner of the handling of the trains by the tenant roads, is there a congestion at the present time?

301 A. There is a congestion to the extent of every switch that is opened or every train that stops.

Q. Is there complaint of that congestion from the tenant lines at the present time? A. There is.

Q. Have those complaints become so serious and the congestion so serious that it has led to any proposed united action on the part of all of the roads with a view of relieving it?

A. It has.

Q. What proposition is there now in view with reference to the action on the part of the Union Pacific and the tenant lines, if any?

A. In considering the numerous complaints that have occurred since I have been in my present position as general superintendent, I have looked about me for some way in which to relieve the situation. First, I established a system of dispatching trains over which the tenant lines operate, using the telephone. This is an innovation and has been, to some extent, effective. It has enabled passenger trains to move without as many delays from freight trains as we experienced heretofore. It also permits freight trains of a superior class to move without so many delays from freight trains of an inferior class. This, however, has not been sufficient to entirely stop the complaints and we have in consideration at the present time an extension of the facilities in the immediate vicinity of the Omaha Union Station. The plans have been submitted to the tenant lines for their consideration. It involves an expenditure of not less than \$500,000, and has been as yet not fully decided

302 upon, but nearly all, if not all, of those interested, had expressed themselves as being willing to approve of such additions to the facilities for the express purpose of relieving the situation and permitting the trains to move with greater regularity.

Q. Would the proposed changes or increase in facilities for handling trains be any relief in case all of the tenant roads were allowed to make deliveries or exchanges direct with connecting roads?

A. The changes as proposed would affect only the particular locality.

Q. Mr. Park, you may explain a little further the effect on tenant roads outside the bridge district of this congestion within the bridge district as complained of?

A. We will say that a train is due to leave the Omaha Union station at 7:30 A M.

By Mr. Stickney: Going east or west?

A. In either direction. The dispatcher in charge of the movement of that train on his own line would be apprised by the officials of the Union Pacific that the train would leave on time. He would arrange his orders or his line-up, as the dispatchers call it, in accordance with that information. If the train was thereafter delayed ten or fifteen minutes, as the case might be before the dispatcher could again get our orders, superseding those that might have been placed in effect, trains of a different class inferior to this would necessarily be delayed. That delay might extend out on the line of the respective roads for fifteen or twenty or fifty miles before it could be recovered from.

Cross Examination,

By Mr. Kellogg:

Q. You say if you may regulate the trains, have them move under your direction, the tracks have not yet reached their full capacity? A. Yes sir.

Q. Well, now, you do regulate all trains that run over these tracks, they are run under your direction, are they not at this time?

A. So far as their rights are concerned, their train rights, not so far as their switching rights.

Q. Well, you mean if the regulation which you have now, continues so that you have control of the trains as you do now, the tracks have not reached their full capacity?

A. No sir, not as yet.

Q. Well, now you do regulate the trains that run over the tracks now?

A. We regulate their movement, but not the delays.

Q. But your statement as to the capacity is in reference to the present condition of management of trains by yourself?

A. It has not as yet reached its capacity, it has probably reached the capacity of good railroading.

Q. But it has not yet reached its full capacity?

A. That would depend on what might be considered its capacity, judging from the complaints that come, it has reached its capacity.

Q. Well, now, complaints are for delays of cars in billing, aren't they?

304 A. Not necessarily; the more numerous complaints we have are of passenger trains being delayed and high class freight trains.

Q. Over the bridge?

A. Over the bridge and between South Omaha and Council Bluffs.

Q. Well, mostly at the Union Station, isn't it, the congestion is?

A. Well, not necessarily, we have some serious delays at South Omaha.

Q. Which is the most?

A. Oh, I should say that the most of the delay between the Union Station and Council Bluffs because there are more trains in that territory.

Q. Now you say you have about 224 trains or a train every six minutes during the twenty-four hours, you mean over the bridge and at the Union Station, don't you?

A. Well, it is over the tracks between Council Bluffs and South Omaha.

Q. Well, not over all the tracks you don't mean? A. No.

Q. Now, I show you the statement, Exhibit No. 4, which Mr. Ware says is a fair seven days picked out with reference to picking out any particular days and that it is a fair illustration of the amount of traffic between the Union Station, Omaha and South Omaha (witness examines statement)

A. Yes sir.

Q. That shows the number of trains going out over the railway from about the west end of your Union Station yards in Omaha to South Omaha of all kinds for seven days does it not?

305 A. Exhibits 1 and 2 taken in connection with each other do, yes. One shows the train movement between Summit Junction and South Omaha and the other between South Omaha and Summit Junction.

By Mr. Stickney: They are the same trains, aren't they?

A. Not necessarily. A train might—there might be a movement between Omaha and Summit Junction and another one between Summit Junction and South Omaha, entirely separate. For instance the Northwestern might go from here to their junction and go over on their line and another train might come down from South Omaha to that point, but it shows all movements that are made.

Q. This statement that you put in shows the movements of passenger trains, freight trains, light engines; now on the 11th of May, the movement from Omaha, which is said to be from the Union Stock Yards, to Summit Junction in the first twelve hours, is 42 east and 29 west; during the next twelve hours it shows 26 east and 32 west. Now adding this up makes 129 movements that day instead of 224?

A. Well, I am willing to concede that we could handle twice as many trains as are on the track.

Q. Well, I am just wanting you to explain the discrepancy between 129 and 224 as you say.

A. A movement in one part of the track—that shows the total number of movements.

Q. Total number of movements including light engines and freight trains and passenger engines?

306 A. I didn't make that report personally, and I have not seen it before, but I had understood from my subordinates that we had as high as 224 movements during the 24 hours.

Q. That would be the maximum?

A. No, well, it was given to me as the average.

Q. Well, either these statements are wrong or that is wrong, isn't it?

By Mr. Rich: You understand that the exhibit and statement to which Mr. Stickney is referring, is from 11th street in Omaha west, you understand that, do you?

A. Yes, that is at the junction of the freight yard and passenger yard. I presume the 224 movements would include all the movements between the eastern terminus of the Union Pacific Railroad and South Omaha.

By Mr. Kellogg: Q. You don't mean that 224 trains go all the way from Council Bluffs clear to South Omaha? A. No.

Q. But you mean for some part of the line? A. Yes sir.

By Mr. Stickney: I understood you to say in effect, that take a train going west, it meets with misfortune in a certain block, something that prevents it from going ahead, that train brings the block immediately in the rear to danger, and that stops the train that would enter that block, makes the train stop in the block behind; now, wouldn't that be the case if there was not any block there, if the train ran off the track?

307 A. They would not have to stop so far apart, they could close up.

Q. Now, isn't it a fact, as your superintendent testified, that in working these blocks, that when a train comes to a signal at danger, it stops one minute and then goes ahead under control? A. Yes sir.

Q. That under the block signal, they would close up just the same as they would under any other?

A. But it would take longer for them to do so.

Q. But the delay is caused by that being off the track, isn't it, it is not effected by the block signals at all?

A. Well, we would say to illustrate, that a train might stop going west as you described at the Summit, for instance, a freight train, and a quarter of a mile or half a mile or a mile back there is a block, that immediately goes to stop, which prevents the following train from passing it without stopping, they are compelled by the rules to come to a full stop. They

stop at that signal and after stopping they wait one minute and proceed. That stop in sequence causes another train that might be following them to stop one minute, providing they meet with no difficulties, but on a heavy grade stopping a freight train they frequently back in and that causes a serious delay; we found it necessary to move one of our signals for the reason that freight trains stopping at that place quite frequently pulled out a drawhead which caused a delay of 20 or 30 minutes.

Q. The delay is caused by the accident, isn't it, the delay would be caused the same if there were not any block signals?

A. Without the block signals, you might, under these circumstances concentrate a certain number of trains in a smaller district than you could with the block signals.

Q. The block signal only requires the delay of a minute and then they pull right out within that block, do they, they are just as close together as ever?

A. We take this, a train stopping at Summit, which we will call three miles from the Omaha depot, they are there doing some work. They put out a trailer and the following train comes up immediately behind their caboose and it stops another that would come up immediately behind their caboose, and there you would have three trains concentrated in a distance of we will say one mile, which would be in comparatively small length of time. Now, under the block signals the first train approaching would stop back, we will say a mile, and that in turn would stop a train back, we will say, another mile.

Q. Oh, no, these block signals are not a mile apart.

A. Oh, yes, they are, they are composed of home and district signals.

By Mr. Rich: Q. How many signals are there in each block?

A. Well, the signals are spaced according to the physical conditions of the road. You may have one signal nearer the other for certain reasons.

Q. Well, they could not get by until that obstruction was out of the way, whether there were block signals or no block signals, could they, they would have to wait until—if the train was off the track and that was the reason they could not go along, they would have to wait until the train was off the track before they could go by on that track?

309 A. If the train was switching you could concentrate the following trains in a smaller area and in that way not congest your track in a much greater area than would occur with the block signals.

Q. But under your block signals they close right up the same way it may take two or three minutes longer for them to close up?

A. That is just exactly the thing, two or three minutes on a busy railroad is a whole lot of time. I will concede that you move over a double track railroad, trains at intervals of one minute, and that is successfully done, I believe, on the elevated roads and in the New York subways, they move very close together. I think on the Union Pacific we have localities where we have a heavier tonnage than in this particular territory.

By Mr. Stickney: And more trains?

A. No, I wouldn't say more trains.

Q. Well, we shall prove that they run more trains over a single track.

By Mr. Rich: Move to strike out Mr. Stickney's statements as to what he will prove.

By Mr. Kellogg: You say you could handle twice as many trains as you do?

A. If I could have absolute control, yes sir.

Q. Now all these trains that are run by these roads are under your direction, you stated?

A. Not to the extent that we control the speed at which the men will switch the cars.

Q. But you do have control?

310 A. No sir, I do not.

Q. But you control the movements, the time of the movements?

A. We have authority over an observance of the rules, not only our employes, but those of the tenant lines; but we have no control over the speed at which they will do their work or the alertness with which they might chain up a car that had a draw head broken out, or the efficiency of the locomotive engineers in moving that train over that territory.

By Mr. Stickney: Don't you examine our engineers as to efficiency?

A. We examine them as to their knowledge of the train rules.

Q. Do you mean to say that you or any officer of the Union Pacific road, when one of your draw-bars pull out, stand around there and boss these men and see to their alertness and activity that they use in doing it?

A. Why, we employ a yardmaster and a trainmaster and an assistant superintendent to constantly educate these men and to check the expedition with which they do their business. That is the object of supervision, and some men are much quicker than others in doing their work. If we find an inefficient employee we would cut him out of the service, but we

could not hardly discriminate between those that would be very quick and those who might be slow.

Q. Don't you suppose the other roads take just the same pains as you do to get competent employees and see that the work is done properly and quickly and expeditiously?

A. I think they do, but I have noticed this in my experience; that an employee—I think you have more authority and your officials have more authority, and the men entertain
311 more fear of them than they would of our officials.

Q. Well, my experience is that they try to do better on other people's tracks than they do on their own

By Mr. Rich: Move to strike out as incompetent, irrelevant and immaterial.

By Kellogg: Q. You have no doubt that the Rock Island, Milwaukee, Northwestern and Great Western get as good employees as they can the same as the Union Pacific? A. No sir.

Q. And that they drill them the same as the Union Pacific?

A. No sir.

Q. And you think the Union Pacific is the only one that drills its employees to do work expeditiously?

A. Without apparent egotism, I think the Union Pacific is in advance of the roads in those particulars.

Q. You do not think those other lines, the Northwestern, or the Milwaukee, or the Rock Island obtain as efficient employees or educate and drill them as the Union Pacific?

A. No sir, so far as I have been able to personally observe, I never have been over the Great Western.

Q. And you think that the Union Pacific employees perform their work more expeditiously and better than the Great Western and the other lines?

A. I would not say as to the Great Western, I think they observe the rules and perform their work quicker than the Milwaukee or the Northwestern.

Q. Now, as every train passes over your line, whatever company handles is under your rules and your directions, and your employees' control, isn't it?

312 A. To a certain extent, to the extent that we examine the employees on the rules and regulations of the operating department as published in our book of rules as to their knowledge of them, as to their efficiency we have no control, if they pass that examination they may be lame ducks and we would not know it.

Q. Have you examined any employees of the Great Western road and objected to them? A. Personally I have not.

Q. Any of your men that you know of?

A. I could not answer that.

Q. You don't know whether there is any complaint as to their efficiency at all?

A. I could not answer that, except that I heard Mr. Ware make such a statement.

Q. Well, now it is just as much to the interest of the Chicago and Great Western, the Rock Island and the Milwaukee to have their work done expeditiously as it is for you to have yours done expeditiously, isn't it? A. It is certainly.

Q. Now, your bridge dispatcher has control of all the Great Western, Rock Island and Milwaukee trains, hasn't he?

A. To a certain extent.

Q. If he tells them to stop within any place they are required to stop, aren't they? A. They are.

Q. And when he tells them to go they are required to go?

A. No, he doesn't have that control over them, there
313 might be two certain points over which he would have no control in that respect.

By Mr. Stickney: Well, he has the same control over them in that respect that he does over your—

A. For instance, any crew might be switching at a certain part of the yard, and the dispatcher would not be able to reach him to tell him that he must go.

Q. Well, isn't that the same case with yours?

A. The same. He has all the control that we can conceive of that is possible to give him.

Q. He has the same control over our employes that he does over yours?

A. Just the same, to the extent that he controls them at all.

Witness excused.

314 It is stipulated and agreed that the contracts referred to, the contract between the Union Pacific, the Northwestern the Milwaukee and the Rock Island, referred to in the decree and supplemental decree in this case and introduced in evidence on the original hearing of this case shall be considered as introduced in evidence in this hearing.

It is stipulated and understood that the entire record and exhibits of the case of the Mason City and Fort Dodge Railroad Company against the Union Pacific Railroad Company are a part of the record and to be considered on the hearing of this order to show cause.

By Mr. Rich: The defendant offers in evidence exhibit A., the same being a copy of an agreement entered into between the Mason City and Fort Dodge Railroad Company and the Union Pacific Railroad Company on the 27th day of December, 1904, together with the map thereto attached. Same is

received without objection and hereto attached and made a part of these proceedings.

The defendant offers in evidence a letter dated St. Paul, Minnesota, Nov. 22, 1904, directed to J. A. Monroe, Freight Traffic Manager of the Union Pacific, and by Mr. Monroe received in the usual course of the mail, signed by P. C. Stohr, General Traffic Manager of the Chicago Great Western Railway, marked Exhibit 9. Same is received without objection, and a true copy thereof hereto attached and made a part of these proceedings.

The defendant offers in evidence letter identified as exhibit 10, dated St. Paul, Apr. 6, 1906, addressed to A. L. Mohler, General Manager of the Union Pacific Railroad, and by Mr. Mohler received in due course through the mail, signed A. B. Stickney, President. Same is received without objection, and a true copy thereof hereto attached and made a part of these proceedings.

The defendant offers in evidence a contract between the Union Pacific Railroad Company, and the Chicago, Burlington and Quincy Railroad Company, of date August 7, 1900, providing for trackage between Gilmore Junction and South Omaha marked exhibit 11. Same is received without objection, and attached, or a true copy thereof hereto, and made a part of these proceedings.

The defendant offers in evidence a contract between the Union Pacific Railroad Company and the Missouri Pacific Railroad Company, dated April 25, 1900, providing for trackage between Gilmore Junction and Summit Junction, marked Exhibit 12. Same is hereto attached, or a true copy thereof, and made a part of these proceedings.

316 Sherlock, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Examined-in-Chief,

By Mr. Rich:

Q. Are you an employee of the Union Pacific? A. I am.

Q. At Omaha? A. Yes sir.

Q. What position do you hold? A. Local Freight Agent.

Q. How long have you held that position at Omaha?

A. About seven years and ten months.

Q. Are your duties such, Mr. Sherlock, and have they been such during that period as to make you familiar with the movements of cars from the tenant lines of the Union Pacific for delivery at Omaha, either to other roads, to the Union Pacific freight station, to team tracks, or to industries located on Union Pacific tracks, or with reference to the exchange of freight between the Union Pacific and the tenant lines directly

either in carload lots or less than carload lots, as well as with reference to less than carload lots of freight received from the tenant lines for delivery to other lines in Omaha for further shipment? A. They have.

Q. In the case of a car delivered in Omaha by one of the tenant lines for delivery to another line or railroad in Omaha, you may state how that car is handled and has been since you have been so employed?

A. The delivery at the present time is made by the
317 tenant line at 20th Street. The car comes over tagged either for the connecting line or the proper industry, or in the case of L. C. L. merchandise it would be tagged to the freight house. The car is set out at 20th street by the tenant line, and is then taken by the Union Pacific switch engine, and by them switched either to the industries located on the Union Pacific terminals to the freight house, located on the Union Pacific terminals, or switched to the connecting or transfer track of the connecting line in the City of Omaha.

Q. And is there a switching charge made for these services by the Union Pacific? A. Yes sir.

By Mr. Kellogg: Q. What is the amount of it?

A. Well, for—they vary—, Mr. Kellogg—I might say this, the proposition of switching is on two different bases, as far as tenant lines are concerned.

By Mr. Rich: Q. You may state, Mr. Sherlock, whether prior to the time the Great Western had its own freight terminals, their tracks, &c., in the City of Omaha, the Union Pacific compelled the Great Western to rebill freight at Council Bluffs destined for Omaha?

A. As to whether they did or not?

Q. As to whether the Union Pacific compelled them to so rebill it? A. They did not.

Q. How was that freight handled?

A. It was handled on through billing as it is called
318 in railroad parlance, interline billing, the billing was on blanks, and waybills of the Chicago Great Western Railway, and was taken in Union Pacific account, and the Union Pacific Freight auditing department, and the Chicago Great Western Freight Auditing department made settlements between themselves.

Q. Was there any greater or other charge made to the Great Western for this service than for the same service performed for the other tenant lines? A. Not to my knowledge.

Q. With reference to carload lots of freight over the Great Western between Omaha and Council Bluffs and South Omaha, state whether or not that was handled on a switching basis?

A. It was not.

Q. How was it handled?

A. The whole business between Omaha and South Omaha, as far as the Union Pacific terminal at Omaha freight station is concerned is all handled on a waybill basis, that is, the same basis that business would be handled between any two stations on the railroad at any point outside of the switching limits, that is, on a regular waybill.

Q. And how was the compensation for that service determined?

A. There is a tariff in effect that provides for compensation.

Q. During the time you have been employed by the Union Pacific as freight agent, have you ever known any of the tenant lines to deliver freight either in carload lots, or less than carload lots, directly to the Union Pacific freight depot, or to any industry located upon any Union Pacific track, or to any Union Pacific team track? A. No sir.

Q. Do you know of their ever having attempted to do so?

319 A. I do not, no sir.

Q. During the last seven years, have you known any of the tenant lines, making a delivery direct of cars to the receiving or delivering tracks, set aside as between the Burlington and Union Pacific, the Missouri Pacific and the Union Pacific or the M. & O., and the Union Pacific? A. No sir.

Q. Have you ever known any of the tenant lines to attempt such a delivery? A. I have not.

Q. In case of delivery of a car by one of the tenant lines to the Union Pacific for shipment west over the Union Pacific do you know where that delivery is made?

A. Going west over the Union Pacific?

Q. Yes.

A. That is where we deliver to the tenant line.

Q. Where would you get that car from the tenant lines?

A. I don't know that I thoroughly understand your question, Mr. Rich.

Q. In case of a car coming from Chicago, for Ogden, where does the Union Pacific get that car from the Northwestern?

A. The Union Pacific gets that car at Council Bluffs.

Q. Does the Union Pacific receive at Council Bluffs from the tenant lines cars for any other destinations than shipment west over the Union Pacific? A. I think not.

Q. In case of freight in less than carload lots coming from the east over any of the tenant lines for delivery to another railroad line in Omaha for further shipment, how is that freight handled?

320 A. That would be delivered in Council Bluffs.

Q. Less than carload lots?

A. Yes, you mean they originate on some line east that has a

terminal in Council Bluffs, going out over some line west, some tenant line, you mean?

Q. No, that is my mistake in putting the question in that form. In case of partial freight coming over a tenant line from the east for delivery to a line in Omaha, not having a connection at Council Bluffs, how would that freight be handled? A. That would be handled through Omaha here.

Q. How long has this manner of delivering freight in carload lots and less than carload lots, as you have described it, been in effect in Omaha?

A. Well, I can't tell you, Mr. Rich, it has been sometime, I don't remember.

Q. Well, ever since you have been employed?

A. Yes sir.

Adjournment was here taken to 1:30 P. M.

Q. Mr. Sherlock, have you made an examination of your records to determine whether or not the Rock Island has been delivering any grain to the Union Pacific at 6th street for delivery in to you to the terminal elevators? A. I have.

Q. Can you find any trace of any such grain?

A. I have not been able to, no sir.

Q. In what manner, Mr. Sherlock, prior to the time the Great Western completed its own freight terminals, did you handle car load lots?

A. The carload proposition was handled on a tonnage basis, that is, by tonnage basis I mean basis that was used in
321 handling the business for the other tenant lines, namely, the Rock Island, Milwaukee and Northwestern.

Cross Examination,

By Mr. Stickney:

Q. You were asked in the case of a car delivered into Omaha by one of the tenant lines for delivery to another line of railroad in Omaha, to state how that car is handled and has been since you have been so employed; your answer was not entirely responsive to the question, but you say the delivery at the present time is made by the tenant line at 20th Street, the car comes over tagged either for a connecting line or the proper industry or in the case of less than carload lots, merchandise, it would be tagged to the freight house. Now you don't mean to include the Great Western? A. No sir.

Q. You mean the tenant lines other than the Great Western?

A. I have reference to the Rock Island, Milwaukee and Northwestern.

Q. Now how is the Great Western handled?

[Q.] Well, you pull your own business into Omaha, we take our business over here and pull it on our own side tracks.

Q. Well, if it is for your team track.

A. But in case you would have a car for some industry located on the Union Pacific terminals I presume that you would put it in on your own terminal and tag that car to you through delivery to the Union Pacific terminal.

Q. But in the first instance we bring it in and pull it on our own terminals? A. I presume you do.

322 Q. Well, now, then, why don't the Milwaukee bring theirs over and put theirs on to their own terminals here in Omaha?

A. For the simple reason that they haven't got any.

Q. Why don't the Rock Island do it, bring it over and put it on their own terminals? A. They have no terminals.

Q. Now you said subsequent to this that when you switched cars that had been delivered on your 20th street line to your freight house, or elsewhere, that you charged a switching charge for it?

A. Well, I said that there were two bases of switching, Mr. Stickney, and I didn't go any further.

Q. I think you said you charged a switching charge for switching those cars?

A. Well, I said there were two bases is the way I put it, namely a switching charge would accrue on a car, for instance, that the Rock Island would bring in here and set out at 20th street going to some other connecting line than the City of Omaha, but if that car was destined to some industry on the Union Pacific terminal a tonnage charge would accrue for switching.

Q. Then you do not make a switching charge for that?

A. Not in cases of that kind, no sir.

Q. Where you take cars from the Milwaukee road or the Rock Island road containing less than carload lots to your freight house you do not charge them a switching charge?

A. No sir, not on that. That is a tonnage rate.

323 Q. Now, if you take loaded cars, carload lots, and place them on your team tracks to be unloaded, you do not charge switching charges for that?

A. No sir, that is tonnage charge.

Q. Now, then, if you take loaded cars of those companies and place them on industry tracks, you do not make any switching charge for that? A. No sir.

Q. Now what compensation do you get for performing that service?

A. That is, you mean on the tonnage proposition?

Q. For all the services that you do for the Milwaukee and for the Rock Island and Northwestern?

A. Well, if a car was going to a connecting line—

Q. Leave out the connecting line.

A. You want to restrict the question to the tonnage basis?

Q. If a car was going on to a team track or to a private industry track the Union Pacific would get a revenue of thirty-five cents per ton, that is, on certain commodities.

Q. Well, on what commodities?

A. Well, everything with the exception of lumber and coal. Those are two exceptions.

Q. Well on lumber and coal what would they get?

A. On lumber they would get thirty cents a ton.

Q. And on coal? A. On coal twenty cents.

Q. Now, if they are handled through their freight house, what do you get?

A. For handling tonnage through the freight house we get forty cents a ton.

324 Q. Without regard to the commodity?

A. Without regard to the commodity.

Q. Now, then, that is under a special agreement, isn't it?

A. That is, as I understand it, a contract and that is my instructions.

Q. Do you know whether the Great Western road after it was entitled to use your tracks under the decree, and before it had completed its freight house and terminal tracks here, requested the Union Pacific to handle their freight in the same way, or not? A. I don't personally, no.

Q. Well, do you know whether or not it was, as a matter of fact, handled that same way?

A. In the same manner as the tenant lines doing business at that time?

Q. Yes, and for the same price?

A. It was, as far as I know. I don't want you to think I want to evade the question at all, the local freight agent is not in a position to know what settlements would be made on that, in other words, so that you can get it thoroughly in your mind, all these bills. I am speaking of the L. C. L. proposition now, all these bills came into the Union Pacific station on through way-bills made by the Union Pacific Railway. The rates made by those bills would have to be on a parity with all other roads doing business over these terminals. What settlement was made between Union Pacific auditor of freights, and your freight auditor, I am not in a position to know.

Q. Well, then, when you said that the Union Pacific did not compel us to pay their local rates on the stuff that
325 was brought over and delivered to your freight house in that time, you stated something you didn't know anything about?

A. I stated as far as I knew personally. All I know is the rates were on a parity with other tenant lines.

Q. What rates do you mean?

A. All rates from competing points.

Q. You made the statement that the Union Pacific refused to do our work on the same terms and for the same compensation that they did for the Milwaukee and St. Paul, and compelled us to pay their local rate from Council Bluffs over here. Now you don't know whether that is so or not?

By Mr. Rich: That was before you had any contract rights or any rights under the decree?

A. No, I don't know personally. I would not be in a position to know.

Q. Now has the Union Pacific a published tariff for switching here in Omaha? A. They have, yes sir.

Q. Have you got a copy of that?

A. I think I have, yes sir.

(Witness produces copy.)

Q. Is that the published tariff?

A. That is the tariff, we are using, Mr. Stickney, yes.

Q. What is the date of it?

A. February 23, 1897 this issue is.

Q. And that has been in force ever since?

A. Yes sir.

326 Q. Now, Mr. Sherlock, during the time that intervened after the decree and we commenced to run our trains over the road, up to the time that we got into our own yards, do you know whether the Union Pacific charged the Great Western more or less than these schedule rates for switching cars to these different industries?

A. Well, prior to the time that you got the decree and up to the time—

Q. No, I am just confining my question between the time we got the decree and the time we got into our present freight house did the Union Pacific charge us more or less, or these exact amounts for switching to these different industries?

A. They charged you the same rates as was charged the tenant lines.

Q. Well, the question is, is it more or less than this schedule rate?

A. Well, they charged you more than that schedule rate, but they didn't charge you any more than they did the other tenant lines.

Q. You charged us more than your published tariff of schedule rates? A. Yes sir.

Q. Isn't that unlawful under the state Commerce laws?

By Mr. Rich: Objected to as incompetent, irrelevant, immaterial, improper cross examination.

Q. Then during that time you refused to switch our cars at the regular scheduled published rate and compelled us to pay more?

327 A. We refused to switch your cars for a less amount than we were getting from the tenant lines for performing the same service.

Q. Well, please answer my question. You refused to switch our cars at the regular scheduled published rates for doing that business?

By Mr. Rich: Objected to as incompetent, irrelevant and immaterial.

Q. That is a fact, isn't it, you charged us more than these schedule rates, you said so? A. Yes sir.

Q. Do you know Mr. P. C. Stohr? A. I do not.

Q. Mr. P. C. Stohr, is assistant traffic manager.

A. I know who Mr. P. C. Stohr is, but I never had the pleasure of meeting him.

Q. You know who Mr. P. C. Stohr is? A. I do, yes sir.

Q. Who is he?

A. He is the Assistant Traffic Director of the Union Pacific, I believe, with headquarters at Chicago.

Q. Do you know whether we paid you more than these tariff rates under protest? A. I do not, sir, no.

Q. You do not know whether we refused to pay more than your schedule rates until you refused absolutely to switch our cars unless we did, and then we paid it under protest.

A. I do not know that, Mr. Stickney.

328 Q. This letter is addressed to J. A. Munroe, Freight Traffic Manager, Union Pacific, Omaha. "Dear Sir:

This Company has completed its freight house and team tracks in the City of Omaha and will now handle Omaha traffic by its own rails. This brings up the question of carload freight for industries on your tracks. Under your tariff dated November 23rd, 1897, you give varying rates for switching per car in the four districts you have made for grading the rates. I understand you switch carload freights for other railroads under this tariff, and we wish to avail ourselves of the same rates and I have notified Mr. Parkhurst, our General Agent at Omaha that hereafter we will bring you carload freight for industries on your tracks at the rates named in this tariff. We, of course, will discontinue the use of your team tracks and freight house under your local freight tariff from Council Bluffs to Omaha now that we have our own facilities in the City of Omaha." Now, then, since this notice, do you know

whether or not you have switched our car load freight at the tariff. A. I do.

Q. Have you, or have you not? A. We have.

Q. Since that time you have switched it at the regular tariff? A. Yes sir.

Q. Now then, what does this mean, "We, of course, will discontinue the use of your team tracks and freight house under your local tariff from Council Bluffs to Omaha?"

Mr. Rich: Objected to as calling for a conclusion the letter itself shows what it means.

329 Q. What do you understand that means?

By Mr. Rich: Objected to as incompetent, irrelevant and immaterial, the letter shows for itself.

A. Why, I presume that it means bridge earnings.

Q. You presume that prior to that time we had been paying you local tariff over here, do you not?

A. I presume that is what it means.

By Mr. Kellogg:

Q. Mr. Sherlock, you said that cars delivered in Omaha to be delivered to other lines were delivered at the 20th street yard? A. Yes sir.

Q. Now, as a matter of fact the Rock Island, Milwaukee, Northwestern which are, with the Great Western, the tenant lines having any carload freight to be delivered to any line going west, either the Northwestern, or to be delivered to each other going west, was always delivered in the pool yards of Council Bluffs, wasn't it?

A. That is, if they are going west in transit, I was speaking when I made that statement, of Omaha only.

Q. You referred, I think I understood you to Omaha stuff going on to industries on the Union Pacific tracks?

A. Yes sir, and connecting lines at Omaha other than the tenant lines.

Q. All these tenant lines interchange freight without the intervention of the switching of the Union Pacific at Council Bluffs yards?

A. That is my understanding, yes sir.

330 Q. Now the Rock Island, having any freight, of course, to go west, on its own line, hauls it west over your line on to its own line? A. Yes sir.

Q. And the Northwestern the same? A. Yes sir.

Q. And the Milwaukee having any freight to deliver to any of the tenant lines delivers it in Council Bluffs?

A. That is my understanding.

Q. And as a general thing, if they have any freight to de-

liver to the Burlington, they deliver it to Council Bluffs, don't they? A. Who?

Q. Any one of these lines? A. No.

Q. But they connect with the Burlington at Council Bluffs?

A. Yes.

Q. And they deliver freight to the Burlington at Council Bluffs?

A. Yes, but there are some instances where the Milwaukee would have even carload freight for the Burlington, and the Union Pacific at Omaha would be the intermediate line and do the switching for them.

Q. The Burlington does not use your track between Council Bluffs and South Omaha?

A. No sir.

Q. The tenant lines did not deliver to each other in Omaha because they delivered in Council Bluffs? A. Yes sir.

Q. And they had no place to deliver in Omaha?

A. No sir.

331 Q. Now all of them delivered to the Union Stock Yards, didn't they?

A. You will have to call me off on anything in regard to South Omaha. I will have to plead ignorance right here.

By Mr. Rich: Ever since the Great Western has had its freight terminals in Omaha it has received all freight from other tenant lines coming from the east in Council Bluffs?

A. Yes sir, as far as I know.

By Mr. Stickney: Well, do you know anything about it?

A. Well, I would be in a position to know if you had any freight—that is, if the Rock Island brought over a car here, of course the Rock Island would set that car out at 20th street, if it was for the Great Western and the Union Pacific would have to make an intermediate switch—

Q. Answer this question then, since the Great Western has had its freight terminals completed in Omaha and been using them, has the Northwestern or Rock Island or Milwaukee delivered any freight coming from the east to the Great Western through the Union Pacific at Omaha? A. No sir.

Q. Do you know whether any attempt has been made since the Great Western freight house was built and in operation in Omaha to deliver any freight on the part of any one of the other three tenant lines to the Great Western in Omaha direct?

A. No sir.

Q. Has there been any attempt made to deliver it through the Union Pacific either by wrong billing, or otherwise?

332 A. I do not know of any such cases.

Q. In case a car brought from the east by either the Northwestern, Milwaukee or Rock Island, should be set out on

the 20th street tracks for delivery to the Great Western, what course would be pursued with reference to that car?

A. Why, it would have to be sent back to the delivering line.

Q. In other words it would be sent back to Council Bluffs to make the exchange? A. Yes sir.

By Mr. Kellogg: Q. Mr. Sherlock, the Rock Island has always run its own engines onto its own tracks at both ends of the Union Pacific terminals here, hasn't it? A. It has, yes.

Q. The Milwaukee has done the same? A. Yes sir.

Q. And the Milwaukee has run its own engines on to any tracks in Omaha furnished it for the exclusive use of the Milwaukee? A. Not for the exclusive use, no sir.

Q. Well, for the interchange? A. Yes sir.

Q. Now it has run its engines on to side tracks opposite the Great Western grain terminals there without the intervention of the Union Pacific switches, hasn't it? A. I don't know.

Q. Well, haven't they got storage tracks that they use exclusively for their own use opposite the Great Western grain terminals?

A. I don't know, you are getting out of Omaha, and I don't know.

Witness excused.

333 William R. Cahill, a witness produced on behalf of the defendants, being first duly sworn, to testify the truth, the whole truth and nothing but the truth, testified as follows:

Examined in Chief,

By Mr. Rich:

Q. You are an employe at present of the Union Pacific?

A. Yes sir.

Q. What position do you hold?

A. Assistant Superintendent.

Q. At Omaha? A. At Omaha.

Q. How long have you held that position?

A. At Omaha, just about a year and two months,

Q. What position, if any, did you hold previous to that in Omaha? A. Trainmaster at Omaha.

Q. How long did you hold that position?

A. Two years and one month.

Q. Your duties as trainmaster and as assistant superintendent have made you familiar, have they, with the movement of trains over what is known as the bridge district?

A. Yes sir.

Q. As assistant superintendent do you have the immediate supervision and control of trains of the bridge district?

A. They are handled through instructions issued by me to the General Yard Master or to the Bridge Dispatcher.

Q. You may state the general condition existing on the bridge district with reference to whether or not it is congested at the present time and has been for some time?

334 A. The traffic on the bridge district has been congested and is at the present time.

Q. Are you familiar with the manner in which cars and less than carload freight brought into Omaha for the east by the four tenant roads or brought in for the west for the Rôck Island, one of the tenant roads, is handled in Omaha?

A. Yes sir.

Q. You may state whether or not under the practice and custom now obtaining in Omaha, any of the tenant lines have the right to make a direct delivery of a car of freight or an empty car to any other tenant line, whether in Omaha or South Omaha?

By Mr. Kellogg: Objected to as asking a conclusion of the witness as to what are the legal rights of the tenant line.

A. They have not to my knowledge.

Q. Have any of the tenant lines so far as you know, made any such direct deliveries or exchanges between themselves either in Omaha or South Omaha?

A. Not that I am aware of.

Q. You know do you that the Missouri Pacific and the Burlington are tenant lines from South Omaha south to Gilmore Junction? A. Yes sir.

Q. And that they have lines connecting with the main line of the Union Pacific at South Omaha?

A. They connect with the Union Pacific at South Omaha.

Q. And you know, do you, that the Chicago Great Western has a connection near 20th street with the Union Pacific to deliver its freight yards and to the tracks and local freight station at 16th street?

335 A. Yes sir.

Q. And that there is also a connection at 20th street with another track that runs from that point in a westerly or southwesterly direction to a connection with the track owned by the Great Western and Independent elevator yards?

A. Yes sir.

Q. You may state what the effect would be upon the traffic between Council Bluffs and a point just south of South Omaha in case each of the tenant lines of the Union Pacific should have the right with its own switch engine or engines to transfer cars or make direct deliveries to any connections that any other tenant lines might have in the city of South Omaha or Omaha, including the two connections with the Great Western at or near 20th street and the proposed connection at or near G street in the city of South Omaha from a track running

thence northerly from there to the southern end of the grain terminals?

A. It would congest our tracks to such an extent that it would be almost impossible for us to move our trains.

Q. You may state whether or not at the present time you have complaints from the tenant roads with reference to the congested condition of the tracks and the difficulty of moving trains promptly over the bridge district?

A. Yes, sir; we have.

Q. In case the privilege of direct delivery by the tenant roads or direct exchange by the tenant roads with each other, wherever there are connections with the Union Pacific was allowed, would that or not, tend to increase the present congested condition of the traffic? A. It would.

336 Q. By virtue of the position you hold, Mr. Cahill, are you familiar with the exchange of cars from Omaha where they are brought from the east by any one of the tenant lines through the Union Pacific as a switching agency?

A. I am familiar with the interchange of cars between the different lines.

Q. You know now how that interchange is made and effected under the custom as it prevails here at this time? A. I do.

Q. Since you have occupied the position either of train-master or assistant superintendent, have you known of any of the tenant roads bringing freight from the east to make a direct delivery of that freight to any other tenant line, either in Omaha or South Omaha having a physical connection with the Union Pacific tracks? A. In two cases that I know of.

Q. What were they?

A. One was on the occasion of the Great Western attempting to make a delivery to the Rock Island at what is known as the Albright yards, and the other was the Rock Island attempting to make a delivery to the Chicago Great Western at 20th street.

Q. Outside of those attempts have you ever known any of the tenant lines to make any such exchanges?

A. No sir, I have not.

Q. Have you ever known of any of the tenant lines bringing freight from the east to make a direct delivery of that freight with their own engines to the Union Pacific

337 freight house, to the Union Pacific team tracks, to industries located on the Union Pacific line or to receiving and delivery tracks established by the Union Pacific with the B. & M., M. & O. or the Missouri Pacific in the City of Omaha?

A. I have not.

Q. Have you ever known any of the tenant lines to attempt to make such direct deliveries or exchanges?

A. No sir, outside of the case which I have cited.

Q. Did you know, Mr. Cahill, that all of the tenant roads running into South Omaha, made deliveries direct to the track owned by the Stock Yards?

A. The tenant lines entering South Omaha, my understanding is, make a direct delivery to the Stock Yards Company.

Q. On the Stock Yards track?

A. On the Stock Yards track.

Q. When a car is returned that has been delivered loaded, do you know whether the tenant line goes in on to the Stock Yards track to get that empty car, or whether it is delivered to the tenant company on one of the four tracks set aside for that purpose?

A. It is my understanding it is delivered by the Stock Yards Company on one of the exchange tracks set aside by the Union Pacific for sending those cars to the tenant lines.

Cross Examination,

By Mr. Kellogg:

Q. All of the tenant companies have always delivered freight for the Union Stock Yards or any industry for the Union Stock Yards Company direct on the Union Stock Yards tracks, 338 with their own engines without the intervention of the Union Pacific, haven't they? A. Yes sir.

Q. And they have always received freight from the Union Stock Yards Company and any industry on the Union Stock Yards Company tracks without any intervention of switching by the Union Pacific?

A. The Stock Yards Company receives cars from the tenant lines on the exchange tracks set aside for that purpose by the Union Pacific.

Q. But they have received it without the intervention of the Union Pacific, haven't they?

A. Take all trains—our engines have set the cars in for them.

Q. Now isn't the universal practice for the tenant lines to receive cars over on the Union Stock Yards track without the intervention of the Union Pacific?

A. It is when it is convenient for them to do so.

Q. And it is the general practice, isn't it?

A. Yes sir, it is the common practice to help one another in such cases.

Q. Do you know that any tenant line has ever claimed the right to deliver a car on to industries on your tracks in Omaha?

A. There have been two cases which I cited where they did attempt to deliver cars on the connecting lines, but not on our lines.

By Mr. Kellogg: Read the question.

Q. (read) Do you know that any tenant line has ever

claimed the right to deliver cars on to industries on your tracks in Omaha?

339 A. No sir, not to my knowledge, they have not.

Q. Or to your freight house? A. No sir.

Q. Don't claim it and never have done that?

A. I don't know what they claim. I never knew them to attempt to do so.

Q. You never heard of any such claim?

A. I have not.

Q. Well, you gave it as your legal opinion that they had no right to interchange in Omaha?

A. That is my understanding that they have not.

Q. You didn't give that as your legal opinion on their right?

A. It is my understanding that they have no such right.

Q. Well, now before the Great Western built its freight terminal and its grain terminal there were no tracks in Omaha belonging to the tenant lines or any of them on which they could deliver cars to each other or exchange with each other, were there?

A. Before the Great Western constructed its terminals?

Q. Yes sir.

A. To effect an interchange with tenant lines you mean, no sir, there wasn't.

Q. So the occasion never rose until the Great Western constructed its tracks in Omaha, did it?

A. It was generally understood that they could not do so and therefore the attempt was never made.

A. Well, there are tracks still in Omaha the same as there were at that time, so far as the Union Pacific is concerned.
340

Q. Did any of the tenant lines themselves own any tracks in Omaha on which they could receive any freight or deliver to each other?

A. Not that I am aware of.

Q. Until the Great Western constructed its lines, isn't that true?

A. So far as I am aware, yes sir.

Q. So that the question never arose before they built, whether they would deliver to each other on their tracks in Omaha?

A. They never did attempt to do it.

Q. Well, they could not because there were no tracks to deliver on, could they?

A. Not that I am aware of.

Q. Now, all of the tenant lines having any freight to deliver to the other tenant lines going beyond Omaha, always have delivered it at Council Bluffs, haven't they?

A. They always have through the interchange tracks at Council Bluffs.

Q. There are interchange tracks there called the pool yard, are there not?

A. Yes sir.

Q. And it is the convenient and natural place for them to do it, isn't it?

A. They always do make their delivery there.

Q. So that that may be left out of the question, may it not?

A. Well, I don't know as it would be necessary in some cases to take the cars to Council Bluffs to make the delivery, coming to the East from the West that would be the natural point and coming from the West by any lines that go to Council Bluffs.

341 Q. Going East it would be the natural thing to connect there, wouldn't it?

A. Yes sir, if it were going beyond Council Bluffs.

Q. The Great Western freight terminals consist of the tracks, the Independent Elevator grounds or around the Independent Elevators and the freight yards at Twentieth street, do they not? A. Yes sir.

Q. They have been constructed within the last three years, haven't they?

A. Yes, sir, in the last three years.

Q. The grain terminal, so-called, the one near the Summit, has only been open for business about how long?

A. Just about a year, possibly a little more.

Q. Now, you give it as your opinion that if the tenant lines were allowed to effect an interchange upon the Omaha Grain Terminals of the Great Western, and upon its freight terminals it would block your tracks and make it impossible for you to handle your trains, is that correct?

By Mr. Rich: Objected to as assuming a proposition not stated by the witness.

A. It would congest our tracks to such an extent that it would cause a great deal of delay in moving our trains.

Q. Now, where does most of the grain which is shipped into Omaha come from?

A. Comes from different places.

Q. Quite likely, but where from?

A. Different points in the state, probably outside the state.

Q. From the West or from the East?

342 A. It may come from both places.

Q. Where does it principally come from?

A. Well, the principal part of the grain I would say would come from the West.

A. Very little grain comes into Omaha from the East out of Iowa, isn't there?

A. Well, there is considerable grain comes into Council Bluffs, no reason why that shouldn't come to Omaha.

Q. Well, most of the grain come from the West does it?

A. At the present time, yes sir.

Q. And it is reasonable to suppose that most of it will, isn't it?

A. Well, that I am unable to state.

Q. In the past it has come from the West, principally?

A. Yes sir.

Q. Now, off from what lines of railroad?

A. The Union Pacific, Burlington, Northwestern, Missouri Pacific, Rock Island.

Q. Now, let us take the Northwestern: the Northwestern connects with the Union Pacific at the point near the south end of the Omaha Grain Terminals of the Great Western?

A. The northern division or western division, yes sir.

Q. That line will cross the proposed connection between the Union Pacific and the Great Western grain terminals as shown on the map Exhibit 1, will it not?

A. I understand it will cross it at that point.

Q. And at that point the Northwestern could put in a Y and run all its grain into the Great Western Grain Terminals without touching the Union Pacific main track at all couldn't it?

343 A. I don't think so.

Q. Why not?

A. Because it would cross the two proposed main tracks of the South Omaha Southwestern line.

Q. Oh, you know they are going to build a track there, do you? So they intend to build a track there?

A. There are two spur tracks there now, that I presume if the Y was built there as you suggest it would have to cross these two spur tracks.

Q. Well, the Union Pacific coming there proposes to build a line from its main line diverging at this point and crossing and connecting with their line further west?

A. I did not say anything about the Union Pacific.

Q. Well, as presently constructed, the proposed connection with the Great Western grain terminals at that point does not cross the main tracks of the Union Pacific, does it?

A. The proposed new track, as I understand, does not.

Q. Then if the tracks remain as they are the Northwestern could put in a Y there and put cars in to the Great Western terminals without touching the now presently located main tracks of the Union Pacific at all?

A. That would depend upon where the Y for the Northwestern line would be built.

Q. Suppose it is built on the west or north side, as you may call it, from the Great Western grain terminal connection?

A. That is all supposition, I am unable to state.

Q. You don't know that a Y put in on the north side would not touch the main track of the Union Pacific?

A. I could tell nothing about a track that does not exist.

Q. You don't know that if a Y was put in there that
344 it would not touch the Union Pacific main tracks?

A. If the Y was in there and I could see it, I might be able to tell.

Q. Do you mean that if the Y was on the east side of the proposed connection—

A. The Union Pacific main tracks are north of, as I understand, the new proposed Great Western—

Q. South, you mean, the north connection of it, the red line leading from the grain terminal to the south is the proposed connection between the Union Pacific tracks and the Great Western terminal, connecting at about G Street in South Omaha following the Union Pacific tracks to the east and connecting with the Great Western grain terminals at the south end of the grain terminal, you understand that don't you?

A. I think so.

Q. Now, that is on the north or west side of the Union Pacific main line, that red track? A. Yes, sir.

Q. Now, that crosses the Northwestern connection west or north of the main line of the Union Pacific track?

A. Yes, sir.

Q. If a Y was put in or should be put in on the west and north of that connection, it would not touch the main tracks of the Union Pacific, would it?

By Mr. Rich: Objected to as incompetent, irrelevant and immaterial, and as supposing a condition of things not in existence and not the condition involved in this hearing.

345 Q. It would not touch it, would it?

A. Not according to the plans as you outline them, it would not.

Q. Well, you know don't you, that that proposed track of the Great Western connection is being built by the Union Pacific now, don't you? A. Yes, sir.

Q. And is going to be built in substantially that way, isn't it? A. That is my understanding.

Q. And it follows the Northwestern tracks west and north of the main tracks of the Union Pacific, you know that, don't you? A. Yes, sir.

Q. And you know that the Y could be put in there between the Northwestern and that track, don't you?

By Mr. Rich: Objected to as immaterial.

A. Yes, sir.

Q. And it could be put in on the north side, couldn't it?

A. You could put a Y anywhere as far as that is concerned.

Q. And if it were built, grain could be put in there on that terminal without touching the Union Pacific main tracks at all, couldn't it?

By Mr. Rich: Objected to as immaterial and as involving a suppositious condition not existing at the present time, and not involved in this hearing.

A. A Y could be built that would not in any way interfere with the connections of the main lines as they are at the present time.

Q. In that case grain could run into the Great Western terminal without crossing the main tracks of the Union Pacific at all?

346 A. As shown on the present map, yes sir.

Q. Now, if that was done, it wouldn't congest the main track of the Union Pacific, would it?

By Mr. Rich: Objected to as immaterial, and as involving a suppositious condition not existing at the present time, and not involved in this hearing.

A. From the Northwestern lines as I understand your proposition, it would not.

Q. Now, the Missouri Pacific connects with the Union Pacific at South Omaha?

A. They do. They connect with our lines very close to N. street, South Omaha?

Q. Do they connect through the tracks of the Union Stockyards or direct?

A. I understand that the tracks to the stockyards are owned by the Missouri Pacific.

Q. Then they connect with you at N. Street; they also have another connection east of E street, haven't they?

A. East of E street at South Omaha?

Q. Yes, a Y connection?

A. That is abandoned at the present time.

Q. Well, there are tracks in there?

A. Yes sir; it might have been used in case of an accident or something blocking the stockyards tracks, but as I understand it it has not been used for sometime.

Q. But it is in there and there is no physical reason why it can't be used?

A. It was abandoned by reason of being a very dangerous crossing.

347 Q. Now, there is no physical reason why you can't use it, it is in there and in shape to use, isn't it?

A. It is there, no reason that I know of if it were agreeable to the different lines.

Q. Now, if that should be connected up with the Great Western proposed connection, that would make a connection between the Missouri Pacific and the Great Western proposed connection that would not touch the Union Pacific tracks, wouldn't it?

By Mr. Rich: Objected to as incompetent, irrelevant and immaterial, supposing a condition of affairs that does not exist, and not being considered in this hearing.

A. Do I understand that this connection of the Great Western's proposed track connects with our main line east of the point where this old connection you are speaking of, is?

Q. Yes sir, that is the Great Western's proposed connection; Oh, no, not east of it, west of it.

A. It connects west of the Missouri Pacific connection there, I don't know as I understand you. What I was referring to is the connection at F. street.

Q. It is near G not F. Now, what I asked you was, couldn't the Missouri Pacific connect with this proposed connection of the Great Western, say a little east of G. Street?

By Mr. Rich: Objected to as incompetent, irrelevant and immaterial, supposing a connection not existing at the present time or under consideration.

A. Would this connection be with the main tracks of the Union Pacific or with the proposed Great Western?

348 Q. It could not connect with the Great Western tracks, could it?

A. Well, if it were connected with the proposed Great Western track, not making connection with the main line, it could not be done, but if it were connected with the Union Pacific main line you have to get two connections with the main track, making it a great deal more dangerous than now.

Q. But if they were connected with the Missouri Pacific main line then you could make connections without interfering with the Union Pacific?

By Mr. Rich: Objected to as incompetent, irrelevant and immaterial, supposing a condition not in existence.

A. Yes sir.

Q. Now, Mr. Cahill, the Rock Island also connects with your line at Albright, does it not? A. Yes sir.

Q. And it would deliver grain from its yards in Albright on to the Great Western grain terminals going on to its tracks

or connections at G street without using your main track for more than a mile or a mile and a quarter, could it not?

A. You would have a great deal more dangerous connection under your proposed plans than what we have at the present time.

Q. Is that an answer to my question? Read the question?

(Question read)

A. That is all supposition. I don't know that you are going to have that connection.

Q. You know there is such a decree, don't you?

A. I know they are building a track, but the track is not built.

Q. Now, if the connection is made at G street as shown on this map, then the Rock Island could deliver grain from
349 its yard at Albright on to the Great Western grain terminals, without using your main track for more than a mile or a mile and a quarter couldn't it?

A. If there were a connection there, it is very true it would not be over that distance to make the connection.

Q. At present if grain should be delivered from the Rock Island to the Great Western grain terminals, how would it be done?

A. The grain delivered by the Rock Island?

Q. From the Rock Island road coming in from the west to the Great Western grain terminals, how would it be done?

A. Well, there are several ways.

Q. Name them?

A. The easiest way that I would suggest would be to take it to Omaha, set it out at Sixth Street and turn it over to the Union Pacific.

Q. Then the Rock Island would haul it from Albright to the Sixth street yards of the Union Pacific in Omaha?

A. Yes sir.

Q. How many miles? A. Four miles, a little over.

Q. Then its engine would go back to Albright?

A. That would depend upon where you wanted the engine.

Q. Well, it would have to go to Albright or somewhere else, it would not stay at Sixth Street?

A. No, there wouldn't be any occasion for it, I wouldn't think, to stay there.

Q. It would naturally go back to Albright?

A. Or to Council Bluffs.

350 Q. In either event it would have to use your tracks coming down from Albright to the Sixth street yards and going back either to Albright or to Council Bluffs?

A. Yes sir.

Q. Then you would take it with your engine at the Sixth street yards and take it where?

A. Would deliver it to your grain terminals above Twentieth street.

Q. Where would you enter the grain terminals?

A. We would take it from the west end of our freight yard at about Tenth street, cross our main tracks at about Thirteenth Street, take the lower yard sidetrack, sidehill track, out at Twentieth Street, and deliver it into your grain terminals, without using our main tracks.

Q. You would cross your yards above Thirteenth street?

A. Yes sir.

Q. Now, you have a yard called the Twentieth street yard on the right hand side going east from Thirteenth? A. Yes sir.

Q. You would run through that yard?

A. No sir, we would not: The yard is at times congested and it is very seldom that you can find a clear track in the yard.

Q. Well, have you extra passing tracks?

A. We would use the sidehill track.

Q. Then you would use your main track from the Sixth street yard until you got up to Twentieth?

A. Yes sir, but you understand, it is not our main tracks, it is our lower yard main track is what I refer to.

Q. Well, it is a main or passing track, isn't it?

351 A. It is what is known as the lower yard main track.

Q. But it extends from the Sixth street yard clear up to Twentieth?

A. No, it leads off at Thirteenth, goes down the sidehill and comes out at Twentieth.

Q. Well, you would not go down here and then up again, would you? A. Oh, yes, we very often do that.

Q. You would pull that grain down that hill and then pull it up again at Twentieth street again, would you?

A. If it was convenient to handle it that way I would.

Q. Is that the way you usually do it?

A. It would keep the main tracks from being congested.

Q. How do you do it now?

A. We don't have any of that grain to handle at the present time.

Q. Well, how is all the grain that has been delivered into the Great Western terminals been delivered?

A. Why I presume the Great Western engines take it across your Twentieth street and deliver it.

Q. Where do they get it? A. That I am unable to say.

Q. They are not a grain hauler in Omaha?

A. I am not aware of that.

Q. You don't know where the grain comes from that goes in there now? A. No sir.

Q. You don't know whether it is delivered by the tenant lines or not?

352 A. It is not delivered at Omaha that I am aware of.

As to where the Great Western gets this grain I am not able to say.

Q. Now you say that you would run down that hill on the lower level and then up at Twentieth street, would you?

A. If it was convenient to move it that way and the Twentieth street yard was congested so we did not have a clear track through there, I would suggest that would be the way we would handle it.

Q. Now you say that that would congest your railroad between the river and South Omaha less than it would for the Rock Island to run that load of grain a mile and a quarter and pull it in our Great Western tracks?

A. It certainly would, yes sir.

Q. That is your opinion as a railroad man?

A. It is my opinion as a railroad man.

Q. Do you know that a great deal of grain has gone into that Independent elevator last year?

A. I am not aware of the fact that there has been considerable grain gone in there.

Q. Where does it come from?

A. I told you that I was unable to say.

Q. Well, you said a little while ago that no tenant line had been allowed to deliver any grain or cars on to the Great Western grain terminals or its Twentieth Street yards, didn't you? A. I don't think that question was asked.

Q. Wheren't you asked if any of them had ever tried to and you said only two of them and then you had prevented it those two times?

353 A. Well, that didn't refer to grain as I understood it, it was asked if any tenant line had attempted to deliver any cars.

Q. Well, grain would have to go in cars, wouldn't it?

A. Why, loaded in bags and then loaded in cars occasionally.

Q. Well, now, do you wish to modify that statement and admit that the tenant lines may have delivered grain into the Great Western terminals during the last year?

A. I have no knowledge of any tenant line delivering any grain to the Great Western grain terminals.

Q. But you don't know whether they have or not?

A. They have not to my knowledge.

Q. Well, do you know whether they have or not?

A. I don't know that they have.

Q. And you don't know that they haven't?

A. No sir, I do not.

Q. Then you don't know but what the tenant lines or some of them have delivered grain to the grain terminals within the past year?

A. If they had I would have known something about it, I am pretty positive.

Q. Well, then, how do you think the Great Western got all that grain in there?

A. I presume they hauled it in there themselves.

Q. How did they get it there? A. I don't know.

Q. Do you think the Great Western hauled all that grain from Iowa, in there?

A. I don't know; they may have got it from some of the connecting lines at Council Bluffs, from the east.

354 Q. Do you give it as your opinion that the grain that has gone in there has gotten to the Great Western from connecting lines in Western Iowa?

A. I would not offer an opinion, as I don't know where the grain came from.

Q. Now, if I tell you that a large amount of grain has gone in there from the West, will you tell me how it got there?

By Mr. Rich: Objected to as incompetent, irrelevant and immaterial, the witness having stated at least a half dozen times that he don't know.

Q. Then you do not know that the tenant lines have universally not delivered grain or cars at connecting lines in Omaha, do you? A. That they have delivered?

Q. That they have not?

A. I know that they have not, from receiving such information from my inferior or the general yardmaster.

Q. Well, when you said that the tenant lines had never delivered or attempted to deliver any cars to any other of the connecting lines in Omaha, do you testify to something that you know or are guessing at?

A. I am not guessing at anything, I am simply telling you what I know to be a fact.

Q. Well, you do not know whether they have delivered into the Great Western grain terminals or not, do you?

A. Well, that would be a pretty hard matter to say.

Q. You say your tracks are congested between Council Bluffs and South Omaha, do you? A. Yes sir.

355 Q. You heard the General Superintendent testify that they could move twice as many trains west of the station in Omaha, didn't you? A. I did.

Q. Did you agree with him?

A. If the trains could be kept moving and not stopping, setting out cars, possibly you could do so. If a train stops at different points you are blocking your main tracks.

Q. If they could be moved as he said, under your control?

A. If they could be moved, yes, keep the trains moving.

Q. You don't claim that track is used to its full capacity?

A. The track at times is over-burdened, at other times it is not.

Q. But I mean on an average.

A. Well, the [—] fluctuates, it is hard to tell.

Q. Now, there are more than twice as many trains across the bridge as there are going from the west end of the Sixth street yards to South Omaha, daily, are there not?

A. Well, I don't hardly think it would be that much.

Q. Well, your time tables show that of your regular trains there are more than twice as many trains cross the river as go to South Omaha.

A. That is true, but there are a great many irregular trains which the card don't show.

Q. Your statement of trains shows that the average number of trains going from the west end of your yards at Eleventh Street is a little less than one hundred trains a day both ways.

A. That might be for that period, that might have been a light week.

356 Q. Well, you selected it yourselves, didn't you?

A. That was handled by Mr. Ware.

Q. And your statement here of trains including light engines and everything else, shows for the month of March about 225 trains across the bridge, including light engines and everything else, do you know whether that is correct?

A. No sir, I do not.

Q. Well, there are about twice as many trains across the bridge as there are between Omaha and South Omaha, are there not?

A. Well, that would depend upon how the business was.

Q. Well, on an average, there are more trains between Omaha and Council Bluffs than there are between Omaha and South Omaha, a great many more, are there not?

A. There possibly is, it would vary.

Re-direct Examination,

By Mr. Rich:

Q. The trains across the bridge do not stop to switch and set out cars, do they, as they do between Omaha and South Omaha? A. No sir, they do not.

Q. Now, has it been called to your notice that at times when there are repairs being made on the bridge, there was an unusual congestion, and have you had any complaints by reason of that from the tenant lines? A. We have, yes sir.

Q. Do you know of any particular one of the tenant lines that have made strong complaints to you on that account?

A. They have all, more or less entered complaints; the Chicago, Great Western has made as many complaints as the other lines, it has been general by the different lines, all
357 complaining about the congested condition of our lines and being unable to move their trains.

Q. Mr. Cahill, in case the Rock Island should bring a number of cars loaded with grain from the West to be delivered to the Union Pacific at Sixth Street, in making an order running that train, it wouldn't stop, would it, from the time it entered upon the east-bound track of the Union Pacific at Albright until it reached Sixth Street?

A. No sir, it would not. If you will allow me to explain, I will explain why it would be much easier and simpler to make a delivery of that kind than it would under the question Mr. Kellogg asked me.

Q. You may explain?

A. The Rock Island, on entering our line at Albright, crossed both main tracks. If they made a connection with the proposed new track at F street they would also have to cross the main tracks again, they would also have to cross the main tracks again at Thirteenth Street in coming out onto our main line again.

Q. That is, you are supposing in your illustration, that these cars are attached to a train that is going on through to Council Bluffs? A. Yes sir.

Q. Now, in case those same grain cars were simply pulled out of the Rock Island tracks by a switch engine and taken up into the stockyards then it is a fact is it not, that that switch engine would have to cross both main lines or pass from the east bound main line across the westbound main line at G street to get on to the elevator track and then after
358 delivering the cars to the elevator it would either have to come out at Twentieth street and south again on the west bound main line to Albright if the engine was going there or back out of the yards on the westbound main line at the connection of G street and thence down to the connection at Albright?

A. It would make the movement much more dangerous than it would otherwise.

Q. Mr. Cahill, for years the Burlington and Missouri Pacific have been tenant lines of the Union Pacific at South Omaha, with connections? A. Yes sir.

Q. And with physical connections just the same as the Great Western connections at Twentieth street? A. Yes sir.

Q. Have you ever known since you were trainmaster or assistant superintendent, of any tenant line and I mean by the tenant lines the Great Western, the Rock Island, the Milwau-

kee, or the Northwestern, with the exception of the two cases you mentioned, attempting to make a direct connection with the Great Western tracks at Twentieth street or with the Missouri Pacific connections at G street, or with the Missouri Pacific connection at N street or with the Rock Island connection just before that, or with the Burlington connection between the two? A. I have not.

Q. But those connections have been in existence at all times since you have occupied the two positions you have told about?

A. Yes sir, they have.

359 Q. During all these years that the Missouri Pacific has had these connections at South Omaha with the Union Pacific in case the Northwestern, the Great Western, Rock Island, or Milwaukee had a car coming from the East to be delivered to the Missouri Pacific how would they deliver that car?

A. The car would be set out at Twentieth street, taken by our engine to the lower yard and delivered to the Missouri Pacific at their connection at Davenport street.

Q. During all of these years and since the Burlington has had that connection at South Omaha, in case the Great Western, Rock Island, Milwaukee or Northwestern brought a car from the East for delivery to the Burlington, how would that delivery be made and how should it be made?

A. The car would be set out at Twentieth street tracks, taken by our switch engine to the lower yard and then delivered to the Burlington on their transfer tracks.

Q. Since the Great Western has had a connection with the Union Pacific at Twentieth street, in case a car was brought from the East by any one of the other three tenant lines, for delivery to the Great Western, where has that delivery been made?

A. If a car was brought from the East by one of the tenant lines?

Q. Yes? A. And taken to Omaha?

Q. No, if it was brought from the East where did those other three lines deliver to the Great Western?

A. They deliver at Council Bluffs in their pool yard.

Q. State whether or not the Union Pacific has any control of the times at which the tenant lines shall bring cars or
360 move cars over the Union Pacific tracks?

A. They have not.

Q. In case of cars dropped at Twentieth street by the tenant lines or in case of cars from the West dropped at Sixth Street by the Rock Island for switching by the Union Pacific, can the Union Pacific control the time at which those cars shall be moved?

A. They can, that is, in their own yard, and if handled by

our own engines, they can be handled at a time which would not interfere with other trains.

Q. That is, at a time when the congestion would not be so great?

A. The yards would be clear so it would not interfere with other movements.

Q. You may state what the condition at the present time is of the depot tracks with reference to congestion, at the hour of 7:30 A. M.

A. The tracks are very much congested at the Union Depot at about 7:30 A. M. There are two trains on each one of the five tracks and there are three trains on the other track which leaves the passenger depot about as badly congested as you can get it. If one of the trains happens to be late, that adds to the congestion.

Q. Now, does the movement of these trains at this hour affect the movement of the freight trains west of Eleventh Street through the block signal?

A. If the bridge runs and freight trains were not held back it would congest and block our trains to such an extent that it would be nothing unusual for a passenger train to lose an hour going between Omaha and Gilmore?

361 Q. You may state whether or not the Union Pacific has the same control over the movements of the employes of the tenant lines in moving their trains and performing their work as it has over the employes of the Union Pacific?

A. They have not.

Q. And what is the result?

A. The result is that the tenant lines cause a great deal more delay than our own train men do.

Q. In moving these cars that are delivered to the Union Pacific by the tenant lines it is a fact, is it not, that the Union Pacific can move them over other and different tracks than the tracks over which the tenant lines can move them under the contract? A. Yes sir.

Q. Under the contract lines can only move these cars over the main lines and passing tracks? A. Yes sir.

Re-cross Examination,

By Mr. Kellogg:

Q. Now, you say the greatest congestion is at the Union Depot? A. At that hour of the morning, yes sir.

Q. Well, how is it usually?

A. Well, in the morning at that hour, the afternoon between two and three and four thirty, it is practically the same, and also in the evening between five and six. Later, between the hours of seven and eight.

Q. Then the most congested place according to your testimony, is at the west end of the bridge?

A. The west end of the Missouri River Bridge?

362 Q. Yes?

A. Would be through the yard during the times the passenger trains were centered at the depot.

Q. Well, what is generally the most congested part?

A. The most congested part at the present time is between Council Bluffs and the Missouri River Bridge.

Q. Well, west of the bridge, I am speaking of?

A. West of the bridge would be between 11th or 13th street and the Summit.

Q. Well, I thought you said the most congested part was along at the depot?

A. Right in the depot grounds.

Q. Well, that part is the most congested, is it? A. Yes sir.

Q. Well, you say you have no control over the time the tenant lines shall run their trains?

A. We have not, that is, other than what is carded on our bridge district time card.

Q. If the Northwestern and the Milwaukee or the Rock Island are bringing a train across the bridge, it is run under your direction, the direction of your trainmaster, is it not?

A. That train shows up at Council Bluffs and comes across without concerning anybody.

Q. Yes, but if you stop it, it stops?

A. If we would flag it, it certainly would.

Q. You have block signals? A. We have.

Q. And they are obliged to run when they are there under your control? A. They do.

363 Q. You can stop them at Council Bluffs and not let them on to the block, if it is congested?

A. Well, our signals do not run far enough to let them come on the track.

Q. Well, if they get on your tracks your signals prevent them from coming further? A. Yes sir, they can.

Q. So may any of the tenant lines you say they can bring cars and put them into your Sixth street yards at any time they please?

A. The Sixth street yards are used for eastern connections, trains going east.

Q. They can bring trains from the West and put them in the Sixth street yards at any time they see fit?

A. That does not interfere with our passenger main tracks.

Q. Well, it interferes with your tracks between the bridge and South Omaha, doesn't it? A. No sir.

Q. It doesn't interfere with the tracks you run trains on?

A. If the tenant lines can bring trains down any time they prefer and put them into the Sixth street yards it uses the tracks so much more, doesn't it?

A. Interferes with the east bound connection not the west-bound.

Q. Well, it burdens your tracks to that extent? A. Yes sir.

Q. Now, then, your wish is, to have all the grain and stuff that comes from the West come clear down and put into the Sixth street yards, isn't it?

364 A. If the grain has got to be handled that would be my idea in handling it.

Q. Now, trains that bring grain to the Sixth street yards how do they put them in there.

A. They cut off the number of cars they want to set out, pull out on the bridge and back them in there to the track assigned for that purpose.

Q. They back in from the east end? A. Yes sir.

Q. Now, trains coming over the bridge and going west, where do they deposit grain or other cars to be delivered to the Great Western grain terminals or Twentieth street yards?

A. They set cars for the Union Pacific out at Twentieth street.

Q. They run up the main track and back in at the west end of the yard?

A. Yes sir, that is, over the latter at Twentieth Street.

Q. Over the main line of the Union Pacific? A. Yes sir.

Q. And you say that tenant lines can do that whenever they please?

A. They can if the bridge dispatcher will let them out of the east end of the Omaha yards or the west end.

[A.] they are under the control of the bridge dispatcher?

A. They are at that point.

Q. Now, you say as another reason why it would congest your tracks more to have the grain from the west delivered in at G street than to have it brought clear down to Sixth street is that the Rock Island in coming off the trains at Albright would cross over your west track on to your east track?

365 A. Yes sir.

Q. Would run down to a connection at G street and would cross back again on to the Great Western connection?

A. Yes sir.

Q. Now, if they were going to haul that to Sixth street, they would cross over in the same way at Albright, wouldn't they? A. At Albright only.

Q. And when they got down to the Sixth Street yards they would have to cross back again, wouldn't they?

A. No, they would let their trains stand on the freight main line and cut out what cars they wanted.

Q. They would run down on the main line and back into the freight yards? A. Yes sir.

Q. So you consider the fact of their crossing your main

track at G street more blocking than it would to come down and run out on to your main track at Sixth street?

A. I certainly do.

Q. Is the traffic heavier at G street than it is at Sixth street?

A. No, but you have got a hill at G street, which adds very materially to stopping and blocking your trains.

Q. If they went in at G street they wouldn't stay on the track at all, would they, the switchman would throw the switch and they would go right in?

A. Well, that would depend on whether you have a switchman.

Q. Well, who is going to protect while you are crossing over there? A. One man can't protect.

366 Q. How do you do it at Twentieth street?

A. We have signals there for protection while they are crossing.

Q. Well, can't you have them at G street?

A. Well, they are not there at the present time.

Q. Well, they can be put there, can't they?

A. Well, that is supposition.

Q. You are giving your opinion on not providing any protection up at G street, are you?

A. I cannot give an opinion on something that does not exist.

Q. You are giving your opinion on connection being put in there without providing proper protection, are you?

A. No, sir, I say I cannot give an opinion on something that does not exist.

Q. If the G. street crossing is put in as the Twentieth street crossing, with the same protection, there would be no more risk at one than the other, would there?

A. It would be worse on account of the side hill.

Q. Well, it is up hill where they pull up to the Twentieth street track, they have to pull up before they can back in there, don't they? A. Yes sir, it would be necessary.

Q. Is there a lead in connection at Twentieth street?

A. You can head right up there.

Q. Is there a switch so you can head in there now?

A. I say there is a lead at Twentieth street.

Q. Don't you know there is no switch there so that they can head in at the grain terminals on Twentieth street?

A. I say you can head in on any track.

Q. On what switch will they head in to Twentieth street coming west on your main track?

367 A. Your engine headed east—

Q. I was talking about cars coming from the east,

tell me how you will head in at Twentieth street without backing in?

A. I say—you are talking about trains going east, are you?

Q. Now, wait a minute, trains coming from the east wishing to go into the grain terminal at Twentieth street can they head straight in at Twentieth street?

A. Oh, no, sir, that is a different question.

Q. Now, trains coming from the East to Twentieth street have got to run up on the main line and back in?

A. Depends upon where they want to go.

Q. To the Great Western Grain terminals?

A. They would have to back in, yes sir.

Q. Now, is it any more dangerous to do it at G street than it is at Twentieth street? A. Yes sir.

Q. Why?

A. Because on a side hill you stop all other trains, that means double, if they have got excessive tonnage, they can't get out of there.

Q. Do you know what the grade is at Twentieth street?

A. It is very heavy.

Q. Do you know what the grade is at G street?

A. No, I can't say I do.

Q. It is lighter, isn't it?

A. A trifle I think.

Q. Then there is more side hill than there is at Twentieth street? A. Well, perhaps so.

368 Q. You assume that the Rock Island engines going into the Great Western terminals will go way down hill and come out at the east end?

A. I don't know how they would get out unless they would back out, over the cut-off at Twentieth street.

Q. Well, I am talking about when that is connected up at G street?

A. You are talking about something that is not in existence.

Q. Didn't you give it as your opinion that it would be more dangerous at G street if that connection was made?

A. I said if the connection was made, yes sir.

Q. And you said they would come out at Thirteenth street?

A. Yes sir, unless they back out.

Q. Why couldn't they back out?

A. They could, it would be the same number of switches thrown however.

Q. You say the Missouri Pacific has never delivered cars to any of the tenant lines or interchanged cars with any of the tenant lines at South Omaha?

A. I said not to my knowledge.

Q. Don't you know as a matter of fact that grain for the

Great Western terminals has been transferred at South Omaha through the South Omaha Stockyards tracks for the last year?

A. I do not.

Q. You don't know that it has not, do you?

A. I don't know that it has.

Q. Well, you have heard that it has?

A. I heard Mr. Stickney say so, yes sir.

Q. Do you know that there is a tariff in effect for that very purpose?

369 A. I have never seen it.

Q. Do you keep track of your tariffs at all?

A. That tariff I have never seen.

Q. You don't know then, whether the Burlington or the Missouri Pacific have delivered grain through the South Omaha Stockyards track or not?

A. That is whether any of the lines you have mentioned have delivered cars to what lines?

Q. The Great Western? A. I don't know.

Q. You don't know whether they have or not?

A. Not to my knowledge.

Q. Now the Burlington you say connects at Gilmore?

A. Gilmore Junction.

Q. Just about a mile east of Gilmore station; and they also, you say, connect at South Omaha?

A. At N street.

Q. And they run their trains to and from those connections on to the Union stockyards tracks, don't they?

A. Yes sir.

Q. For all business? A. Well, that I don't know.

Q. Do any business they please as far as you know?

A. That would not concern us.

Q. The Missouri Pacific do the same, don't they, between their connections?

A. After they leave our lines I don't know what they do.

Q. And they run their trains from Gilmore to South Omaha and back over your track and connect with the Union Stockyards and any other lines that they please as far as you know?

A. I have no way of knowing what occurs after they
370 leave our line.

Q. When they leave your line and run onto their line or the Union stockyards line, you don't know what business they do, do you?

A. No, I would not have any reasons for knowing.

Q. And you would not know how they interchange cars or what they are doing? A. No sir.

Q. Well, then why do you say they have never interchanged cars between each other at South Omaha?

A. I said not to my knowledge.

Q. You stated that if the eastern tenant lines had any cars to deliver to the C. B. & Q. they would bring them over to Omaha and deliver them to the C. B. & Q. at Twentieth street?

A. That is for Omaha?

Q. No, to the Burlington road?

A. No, that was referring to the movement at Omaha.

Q. Very well, if they had any cars to deliver to the Burlington, destined to any point on their line they would deliver them at Council Bluffs, wouldn't they?

A. Certainly they would.

Q. They don't bring cars into Omaha to deliver to the Burlington on your lines, do they?

A. Well, if they had a movement for the Burlington west, the Milwaukee would bring them into our line at 20th street and we would deliver them to the Burlington at the lower yard.

Q. But, as a matter of fact, these cars are delivered at Council Bluffs, aren't they, usually?

371 A. That is the natural interchange point.

By Mr. Stickney: As I understand your testimony and the General Superintendent, and other superintendents that have testified here, you think that if all of the stock that is brought into the Stock yards at Omaha by the Northwestern and the Rock Island should be brought down to 6th street and put on your 6th street yard and then hauled back by you and delivered in the Stock Yards, it would reduce the congestion on your road at this time?

By Mr. Rich: Objected to as immaterial.

A. I don't remember of that question being raised.

Q. Well, do you think it would reduce the congestion to have all that stock brought down here and then hauled back?

A. No sir, I do not.

Q. But you do think it would reduce congestion to have all grain brought down and then hauled back?

A. That is, if it were grain for the Independent Elevator Co.

By Mr. Kellogg: How far is the entrance to the grain terminal connection from the stock yards connection with your line, how far apart are they, the connection at G street?

A. Well, it would be just about a mile, I should judge.

Q. Is it a mile from your connection with the stock yards?

A. From the passing track connection at the present time, are you referring to?

Q. Yes. A. No, not over six hundred feet I would think.

By Mr. Rich: Are the crossings of the tracks at the east

end of the yard near 6th street protected by an interlocking plant? A. Yes, sir.

Q. The crossing?

A. Yes, every move at the east end of the Omaha yard is protected by the interlocking plant or the tower at that location.

By Mr. Stickney: ~~How much~~ would it cost to protect the west end of your 15th street yard and ~~our~~ connection with the Great Western by an interlocking plant?

A. That is the 20th street yard, you mean?

Q. Yes. A. By establishing an interlocking plant there?

Q. Yes, how much would it cost to install an interlocking plant there?

By Mr. Rich: Objected to as immaterial.

A. It would cost, I should judge, very close to six or seven thousand dollars.

Q. When that was done that end would be protected the same as the east end at 6th street? A. Yes, sir.

Witness Excused.

373 W. D. Lincoln, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Examined in Chief,

By Mr. Rich:

Q. You may examine the report of cars passing over the bridge between Council Bluffs and Union Station in Omaha of different lines for the month of March, consisting of a showing of the movements made by the equipment of the C. R. I. & P., the Milwaukee, the Northwestern, the Great Western, the Union Pacific passenger, the Union Pacific freight, the C. B. & Q., the K. C. & St. Joe., the Wabash, and the Illinois Central, and state whether you have made any calculation from that statement showing the number of trains that pass daily, showing the average number of trains that pass daily over the Union Pacific bridge between Council Bluffs and the Union Station, or the 6th street yards in Omaha?

A. I made some figures from this statement

Q. Are the figures you made the computation you made of the average number of trains daily, is that computation correct? A. It is.

Q. You may state the average number of trains daily in the month passing over the bridge between the Union Yards and Council Bluffs?

A. Two hundred and twenty-five and one-tenth trains per day, that is the average for the month.

By Mr. Kellogg: How many of these trains which you refer

to do not go west of the Union Station in Omaha or the 6th street yards?

374 A. A large number of passenger trains which do not go west of the Union Station.

Q. And none of the Great Western, the Chicago, Milwaukee & St. Paul, the Wabash, the C. B. & Q., the Kansas City, St. Joe & Council Bluffs, go west of the Union Station, do they?

A. None of them go west of the Union Station on the Union Pacific tracks.

Q. That is, the passenger trains.

A. Yes, sir, that is what I understood you to refer to.

Q. Now, many of those movements of the 225 are light engines without any trains at all? A. No, very few.

Q. Well, there are some?

A. The number is down there.

Q. Well out of the total of 6979, your statement shows 1208 were light engines? A. Yes, sir.

Q. So about one-fifth of those are light engines?

A. Just about one-fifth.

Q. And some of those are freight trains or switching trains with cars that simply go to the 6th street yards and do not go west? A. No, they are light engines.

Q. Well, but I mean outside of that, some of these trains in this estimate are trains that simply come across the river to the Sixth street yards, and return, don't go west of the 6th street yards?

375 A. There are a few Union Pacific bridge runs in there that go as far as 20th street.

Q. Some of these trains that are in here go to 6th street, deliver cars there?

A. Well, now, I cannot answer that because I am not down in the yard very seldom, but there are no tenant lines, freight trains that stop at the 6th street yards.

Q. Will you make the best estimate you can of how many of those passenger trains stop at the Union Station, how many of the trains or light engines go no further west than 6th street yards, or the 20th street yards in Omaha? A. Yes sir.

376 M. P. Shanahan, witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Examined in Chief,

By Mr. Rich:

Q. You are employed by the Union Pacific, are you not?

A. Yes sir.

Q. How long have you been in their employ?

A. Twenty-three years.

Q. At Omaha all of that time? A. Yes sir.

Q. And during that time what positions have you held?

A. I worked in the freight house for five years. I was car-checker in the yards for nine years, chief clerk for the yard master nine years.

Q. And what are you doing now?

A. At the present time I am foreman outside in the yard.

Q. How long have you held that position?

A. About four months.

Q. And just before you took this last position you were—

A. Chief clerk of the general yard master.

Q. What are the duties of the chief clerk of the yard master?

A. It is to take care of all questions in regard to cars ordered and transact a general business of a general yard master's office.

Q. That is you kept track of, and kept a record of all cars that the Union Pacific switch engines moved?

A. That is, I didn't—if any cars in question to be diverted to other roads or ordered to other roads, in any interchange of cars, it is most generally his work in taking care of
377 them.

Q. Do you remember when the tenant lines began delivering cars to the Union Pacific that were destined for Omaha at 20th street? A. Yes sir.

Q. When? A. Just about last August.

Q. Prior to that time where did they deliver the cars to the Union Pacific?

A. What is known as the 6th street yards, between 10th street and 6th street in the freight yards.

Q. Has the Rock Island ever since it has run west from South Omaha delivered cars for the Union Pacific in the 6th street yards? A. Up until last August.

Q. It always has delivered them down there?

A. They deliver cars that they bring from the west only at 6th street.

Q. And they used to deliver all their cars at 6th street?

A. They used to deliver everything at 6th street.

Q. During the time you have been employed by the Union Pacific have you known the Northwestern, the Rock Island, or the Milwaukee to make or attempt to make direct deliveries of cars to the Chicago & Great Western on its tracks at 20th street connecting with its freight house or team tracks?

A. I have not.

Q. Or have you ever known any of those roads, or either of them to make deliveries or attempt to make deliveries of cars from the Independent elevators to the Great Western at 20th street or at any other point in Omaha?

378 A. I have not.

Q. Where the Chicago & Great Western, or Milwaukee

or Rock Island or Northwestern bring cars from the east that are to be turned over by either of these roads to either of these four roads, where is that delivery made? A. 20th street.

Q. No, where it is to be made direct, they can't make it direct at Omaha? A. I do not mean at Omaha.

Q. Do they make those exchanges at Council Bluffs?

A. Yes sir.

Q. And they always have done that?

A. Always have done that.

Q. Have you ever known either of those four roads to make direct deliveries of cars destined for the Union Pacific freight house in Omaha or for any industry on the U. P. track in Omaha directly? A. No sir.

Q. In case either of those four roads in the past have brought cars to Omaha to be turned over to the B. & M., the M. & O., or the Missouri Pacific, how have the deliveries or exchanges of those cars been made?

A. They would deliver the cars to the Union Pacific at 20th street. The Union Pacific then would run around and deliver them to the lower yard and put them in the proper connection to the B. & M., Missouri Pacific, and Minneapolis & Omaha in the lower yard.

Q. Wherever those tracks are located? A. Yes sir.

379 Q. Have you ever known either of those four tenant roads to bring cars [located] with freight to Omaha where the freight was not for delivery in Omaha, but for delivery to one of the other tenant roads either intentionally or through an improper billing? A. I have, yes.

Q. In that case, what was done with those cars?

A. They were sent back immediately to the road delivering them to us.

Q. And where would they be put by the Union Pacific for the road delivering them to you to get them?

A. The Union Pacific would deliver them back on the track that we used to deliver cars to them.

Q. That is at 6th street?

A. Sixth street, they in turn would take them to Council Bluffs.

Q. Do either of the roads when a case of that kind occurs offer any protest or objection to having the car sent back in that manner?

A. No, it was mutually understood that they knew where the natural transfer was, they made no protest.

Q. Have you ever known any other tenant road to deliver any grain on to the Great Western tracks at 20th street or on to the track connecting with the Great Western tracks at 20th street and the Great Western track at Martha Street?

A. I never heard of any, don't know of any.

Q. Are your duties such, Mr. Shanahan, that if any cars or grain were delivered by any other road by its road engine or switch engine, that you would know of it?

A. My duties were that I should know of it, yes sir.

380 Q. And you have been never able to discover and never have discovered any delivery by any tenant road of that kind? A. No sir.

Q. Have you ever seen the Great Western engines hauling grain into the elevator over the 20th street connections?

A. I have seen them hauling grain over the lead leading to the grain terminal, but I have not seen where it was going.

Q. You presume it went up to the elevators?

A. Yes, it is a very long lead, something like two miles, couldn't tell where they were going to go.

Q. Have you any means of knowing where the Great Western got those cars of grain? A. I have not.

Q. Have you ever seen the Great Western engines bring cars of grain over the westbound main line of the Union Pacific from towards Council Bluffs and going in on these tracks headed toward the grain elevators?

A. I have seen them fetch cars over but I could not say what was in them.

Q. You do not know whether they were loaded or not?

A. No.

Q. Have you ever seen any other road than the Great Western take cars out or bring cars over on that lead that goes up to the grain elevators?

A. Not outside of the Union Pacific engines.

Q. You never have? A. No sir.

Q. Does the Union Pacific deliver some cars of grain to the Great Western either on to the lead that goes up to the elevator from 20th street or on the Great Western tracks that lead up to the 16th street freight station?

A. They do, yes sir, to the Great Western yards.

Q. Do you know where the Union Pacific gets that grain from what connection?

A. Most generally their own grain from the west.

Q. Well, do you now recollect any instance of the Union Pacific switching grain in there on to the Great Western tracks that it got from any connection in Omaha or South Omaha or from any other road?

A. I think, if I don't forget myself, that we have had grain from the Northwestern, that is, I mean by the Northwestern the M & O and delivered it to the Great Western at 20th street.

Q. Do you recall any other deliveries of grain by the Union Pacific that were received from any other road entering Omaha?

A. That was all, to my recollection.

Q. What kind of a record do you keep of cars delivered by the Union Pacific to the Great Western or any other road; do you keep a record that will show the character of freight in the cars?

A. No, we don't, we keep what they call an interchange blank, but the road delivering the cars to us show on their interchange report the contents of the car and we in delivering that car do not show it on our report.

Q. Are those reports delivered to you by the road that delivers the cars to the Union Pacific?

382 A. The road that delivers the car to us send the report over and it is signed by our agent.

Q. And then what becomes of that report?

A. The original goes back to the road sending the car and we keep the duplicate.

Q. Do you keep them on file? A. Yes sir.

Q. Do you keep them for all time or for a time and then destroy them? A. For all time.

Q. And where are those duplicates kept?

A. Down at the yard master's office.

Q. Is there a record kept in the yards west of 11th street of the movement of cars or trains over the Union Pacific tracks east and west?

A. Yes sir, there is a record kept of all regular trains and extra trains westbound and eastbound and there is a record kept at each junction point of all the foreign trains passing at that point entering in—

Q. Does this record that is kept of the movement of all trains in the yard west of 11th street include the movements of all cars and trains passing in each direction over the road?

A. No sir.

Q. What does it not include?

A. It does not include switch engines in helping trains to and from Gilmore, Rock Island through trains, Milwaukee meat runs from South Omaha, the Northwestern, the Rock Island and the Great Western.

Q. That is, it does not include these?

383 A. No sir, it includes coming from the east what trains stop at Omaha and set out cars in the way of bridge runs.

Q. Who keeps that record? A. The car checkers.

Q. Do the switch men there keep any record of any cars?

A. The switchman if he leaves with the train at Omaha for South Omaha, he keeps a record of it; he keeps a record of every car he moves one way or the other.

Q. Are you familiar with the tracks between the Union Station at Omaha and say N street at South Omaha?

A. Yes sir.

Q. Did you ever hold any position that took you over that frequently?

A. No sir, I have not; only as chief clerk in taking care of accidents and personal injuries I have had to travel that territory.

Q. Well, how far west of the Union Station did your duties take you? A. My present duty?

Q. Yes. A. 20th street.

Q. Do you keep a record of delays, accidents, etc?

A. I keep no report of delays, almost generally we keep a report of accidents, whoever has them.

Q. Well, is such a record kept in the yard master's office?

A. Of all accidents and delays, yes sir.

Q. You may state whether the business as conducted at present is easily and readily and promptly moved over the lines west of 11th street toward South Omaha, or whether or
384 not there is at this time more or less congestion and delay by reason of the congestion, the number of trains moved, etc?

A. Their trains are handled as promptly as possible under the conditions.

Q. Are there at present delays notwithstanding the fact that the engines and trains are handled as promptly as possible?

A. Yes sir.

Q. State whether or not it is difficult to conduct the volume of business that is now conducted by reason of the congestion?

A. It is very hard to do so.

Q. Do you have any knowledge of complaints that are made by tenant lines, the Great Western, Northwestern, Milwaukee or Rock Island by reason of delays over the road?

A. In my present position I have not, but the nine years I was chief clerk of the yard master, I was constantly every day, running down the cause and making reports of delay.

Q. Well, those reports and complaints were frequent, were they? A. Quite frequent.

Q. Now what did you find the general cause of these delays to be?

A. The general cause was on account of being obstructed by too many freight trains hauling too big a train backing in and obstructing the track and holding the tracks against passenger trains.

Q. State whether or not the switching that is done along the line of our switches, has anything to do with the delay?

A. A great deal of the delay in some particulars was caused by tenant lines setting out cars at 20th street and
385 leaving a portion of their trains stand on the main line while they backed the cars that were to be delivered to the Union Pacific in on some vacant track.

Q. Did the dropping of brine by the meat trains and the consequent effect on the signals have anything to do with the delays?

A. Yes sir, very much; one block in particular that was moved on that account.

Q. In case all of the tenant roads, to-wit: The Chicago Great Western, Northwestern, Milwaukee and Rock Island had the right to run their road engines and switch engines directly in on to the various connections of the main line of the Union Pacific including the connection between the Great Western line that runs into its 16th street freight house, and including the connection that is made with the track that leads up to the grain terminals would such a use of the tracks by all of the tenant lines tend to increase this congestion or confuse it?

A. Very much so, not only in the main yards, also in the side yards.

Q. In case any of this work of setting out or picking up cars from these connections was done by these meat trains, would the fact that these trains stood still for a while, increase the dripping of the brine and consequently increase the evil effect upon the block signal system?

A. It would because every time they attempt to stop, they pretty near flood the track.

By Mr. Kellogg:

Q. You say if all the tenant lines had a right to run their trains on the various connections, including the connection of the Great Western, it would tend to congest the tracks of the Union Pacific a good deal more? A. Yes sir.

Q. Now what various connections do you refer to?

A. I refer to the connections of the C. B. & Q.

Q. Where?

A. In the east end of the upper yard, 6th street.

Q. Well, now, have any tenant lines ever claimed the right to run on the C. B. & Q. tracks?

A. Not that I am aware of.

Q. Now what other connections do you mean?

A. The Northwestern connection at the Summit?

Q. Does the C. B. & Q. connection that you refer to connect with the main track of the Union Pacific? A. Yes sir.

Q. Where? A. 6th Street.

Q. At the bridge? A. Not quite the bridge.

Q. You never knew any roads that claimed the right to run on there did you? A. No sir.

Q. Now the Northwestern run all their trains on and over there without the Union Pacific switching, don't they?

A. Yes sir.

Q. Well now, do you know of any other road that would claim the right to run on there without the consent of the Northwestern?

A. I don't know, I am sure, they have not asked for it.

387 Q. Well, in running on to that they would run right off the Union Pacific tracks, wouldn't they?

A. Yes sir.

Q. What other connections?

A. The Rock Island, Albright.

Q. Name the rest?

A. That is all we have so far except the Great Western.

Q. Now take the Great Western, you say no tenant line ever undertook to deliver to the Great Western tracks?

A. Not to my knowledge.

Q. Isn't it a fact that the Great Western grain terminals was never open for business until last October?

A. I don't know just when it was opened, I know it was open sometime last fall.

Q. So it is during that time that you have not known of their trying to make connections? A. Yes sir.

Q. But you do not know whether they have run their engines on there or whether they have not?

A. I know that they have not.

Q. Where has the Great Western gotten the grain that has gone into their elevators?

A. Well, they will have to answer that, I can't.

Q. Has it all been hauled in with Great Western engines?

A. I don't know.

Q. Has it all been hauled in by Union Pacific engines?

A. I don't know whether they ever got any.

Q. And if they did bring any you don't know whether they ever— A. No sir.

388 Q. You don't know then whether tenant companies have ever been in there? A. Yes sir.

Q. Well, then, you do know where they got it?

A. No, sir, you are asking me about grain.

Q. Well, cars, then, you know there has been no companies' engines in there except the Great Western?

A. I am busy all my time on duty.

Q. You don't know what runs in there nights? A. No sir.

Q. Where is your place of duty?

A. In the general yard master's office.

Q. East of 20th street? A. East of 11th street.

Q. And you don't know what companies' engines have run in there?

A. Outside of the Great Western, no sir.

Q. Then you don't know whether they have hauled grain in there, do you? A. I would know it if they had.

Q. How would you know it?

A. I am supposed to get a report of it from the switch tender.

Q. Well, then, what trains have run in there?

A. Only the Great Western outside of our own.

Q. Well, that is one connection that would block the Union Pacific if other lines run in there? A. Yes sir.

Q. In other words it takes a good deal more time to run a Rock Island engine in there than it would a Union Pacific?

A. Yes sir, it does.

389 Q. Why?

A. For the simple reason that you have got a great deal more switches to throw.

Q. Well, if the Rock Island brings in on the same switch that the Union Pacific does, would it take any more?

A. He can't go in on the same switch, as the Union Pacific, because the Union Pacific don't use the main line.

Q. Well, now if the Union Pacific enters in that proposed switch at G street would it use the same line that the Rock Island would, if it was going in there?

A. I don't know whether the Rock Island goes in there or not, it is a supposition that they both go in there, yes.

Q. Take one the same length of time that it took the other?

A. Not the Union Pacific, no.

Q. They could do it quicker than the Rock Island?

A. Yes sir.

Q. Why?

A. Because how would the Rock Island get there.

Q. To run over a common switch wouldn't take one engine any longer than it would another?

A. No, the Northwestern engine could run in there as quick as the Rock Island, as far as the common switch is concerned.

Q. As far as the common switch is concerned? A. Yes.

By Mr. Rich: Q. A switch engine can do this work quicker can they not, than a road engine?

A. Oh, yes, in a third of the time.

390 By Mr. Kellogg: Q. Can the Union Pacific switch engine do it any quicker than the Rock Island

A. I think so.

Q. Why?

A. Because they are more used to it, the facilities of the track and everything of that kind, in connection with that point.

Q. That is your only reason? A. Pretty good reasons, too.

Q. You think it would take the Rock Island engine longer than the Union Pacific, is that your only reason?

A. Oh, no, I have lots of reasons.

Q. Well, what are they?

A. I told you it would not take one any longer to go over the switch than the other.

Q. Then one could do it as quick as the other? A. Yes sir.

Q. Then it would not take the switch engine any longer for the Rock Island to do it than for the Union Pacific to do it?

A. Well, but you asked me a different question.

Q. It would not take any longer for the Rock Island to do it than it would the Union Pacific, would it?

A. To do the switching at that point the Union Pacific would do it quicker than the Rock Island?

Q. Why?

A. For the reason they are better acquainted with the facilities with which they are working.

Q. Well, how long would it take the Rock Island switch men to get acquainted with it?

391 A. Well, it may take some switchmen a year, some two years, and others about six months.

Q. You think the Union Pacific switchmen get acquainted quicker than the Rock Island?

A. No, I don't, but the Union Pacific switch crews use it four, five and six hours a day steady and one crew continually there all day long and one there at night when those men do not stop at these points at all. They pass on and go into their yard.

Q. Now would you keep a Union Pacific switch crew there to switch grain cars into the Great Western terminal all the time, would you keep them there for that purpose?

A. Why not on the main line, no.

Q. Well, the Union Pacific would not have a regular switch crew there to switch cars into the Rock Island would they?

A. Yes sir, they have a regular switch crew at South Omaha.

Q. Where would they get the Rock Island train?

A. They would go to Albright and get it.

Q. And bring it down and switch it into the Great Western terminal at G street? A. Yes, sir.

Q. And if the Rock Island took their switch crew at Albright and brought it in there they would perform the same service exactly, would they? A. No there would be more of it.

Q. Why more of it?

A. For the simple reason they would have to go further in on the track and further away from home.

Q. Why, you would take your switch engine and go to Albright? A. No.

392 Q. Where would you go?

A. It would be delivered to us on our tracks at South Omaha, on our passing track.

Q. That is, you say the Rock Island would deliver grain to the Great Western terminal on your short track at South Omaha? A. Yes, sir.

Q. Where is that track located?

A. Right west of the depot.

Q. To do that they would have to run their engine down from Albright around down to that short track?

A. Yes, sir.

Q. And run it back to Albright?

A. Yes, sir.

Q. And you would take your switch engine and go in and take it and put it on to the Great Western? A. Yes, sir.

Q. And you say that is less service and uses your tracks less than it would for the Rock Island to take the car at Albright and run it right straight across to the Great Western?

A. Yes, sir.

Q. And it blocks your tracks less?

A. The Union Pacific delivery would, yes sir.

Q. Under the plan just stated, the Union Pacific would make four trips over your track, wouldn't it?

A. Yes, sir.

Q. And if the Rock Island delivered it direct it would make two wouldn't it? A. Yes, sir,

393 Q. The Rock Island move all their trains under the orders of your bridge dispatcher? A. Yes, sir.

Q. Same as the Union Pacific? A. Yes, sir.

Q. And they move them under orders from him the same as the Union Pacific, don't they? A. Yes, sir.

Q. Well, you have given all the reasons why it would block the Union Pacific more than it would to have the Union Pacific do it?

A. The reason he would block it more, he would block it both ways. If they brought the grain from the Rock Island down to that delivery track you spoke of at South Omaha, they would block it both west and east; they would block it down there and they would come up here and block it back here, and block the main lines twice.

Q. And they would do it the same whether they delivered it on to your short track or on to the main line?

A. No, they would not have to go on the main line.

Q. You said the Rock Island would come on to the main line at Albright? A. Yes, sir.

Q. Now, to come to deliver grain on to your short track, the Rock Island would run on to the main line, wouldn't they?

A. No, they wouldn't.

Q. Well, then, they wouldn't need to come onto the main line when they delivered it to the Great Western, would they?

394 A. How would he get on to that connection?

Q. If the Rock Island was going to deliver a car into the Great Western switch at G street it would run on the main line, wouldn't it? A. Yes.

Q. If the Union Pacific was going to do it for the Rock Island it would run on to the main line? A. Yes, sir.

Q. They both use the main line in just the same way?

A. No, sir.

Q. Wouldn't they each have to go in and come back?

A. The Union Pacific would come out here.

Q. Wouldn't the Union Pacific have to run in on the main line and come back? A. Yes, sir.

Q. And wouldn't the Rock Island do the same?

A. Yes, sir.

Witness Excused.

395 Mr. Park—re-called.

Questions by Mr. Stickney:

Q. You are building this new cut-off line from somewhere near the Summit over to strike your line at Lane, when will that be completed?

A. I should say in about a year from now.

Q. That connects with your main line at about the city limits? A. Very near the city limits of Omaha?

Q. Between Omaha and South Omaha? A. Yes sir.

Q. Now when that line is completed the most of the Union Pacific trains will go out that way?

A. The greater portion of the westbound business will go that way and the eastbound business will come in that way.

Q. That will relieve the portion of track between the city limits and the Stock Yards a good deal, won't it, be less traffic on it there?

A. The stock trains will probably come in there and back out to South Omaha.

Q. But that is going to relieve this portion of the line of considerable traffic?

A. It will relieve it to a considerable extent.

Q. Then it will relieve it to the extent of practically all of the Union Pacific business?

A. I should say probably seventy-five per cent of it.

Re-direct,

By Mr. Rich:

Q. For business destined for the stock yards, if it is brought

over that, it would have to be backed from that connection down to the Stock Yards? A. Yes sir.

396 Q. Or any South Omaha business? A. Yes sir.

By Mr. Stickney: Q. I don't suppose you claim that the building of that line is going to increase the congestion of the main tracks? A. West of that point?

Q. Well, anywhere? A. Well, it might east of that point.

Q. Well, do you think it will east?

A. We hope it will increase the business.

Q. But the same amount of business done over that line would tend to increase the congestion?

A. The same amount of business would not.

It is stipulated and agreed that this hearing be continued until the 19th day of June at 10 o'clock A. M., and that the court may enter an order extending the time to take and return the testimony.

397

Tuesday, June 19, 1906.

Pursuant to adjournment the further taking of testimony was resumed at 10 A. M.

E. Worth Kolb, a witness produced on behalf of defendants, being first duly sworn, testified as follows:

Examined-in-Chief,

By Mr. Rich:

Q. What is your business?

A. Supervisor of signals, Nebraska Division, Union Pacific.

Q. How long have you held that position?

A. About two years.

Q. You may describe in a general way the construction of the signal service and its extent?

A. Well, you refer to block signals?

Q. Yes, block signals.

A. The block signals as we have them installed, extend from Council Bluffs to Valley. They are automatic in action and depend on the movement of trains over the track for their operation.

Q. Can you, from memory, name or designate the location of the blocks from the Union Station west with reference to cross streets on the westbound main line? A. Yes sir.

Q. You may do so.

A. We have one at 16th street, at 20th street, at Vinton street, at about B street South Omaha, and at L street, Q street, at Albright.

398 Q. Are the movements of train on the eastbound track governed by signals located as you have designated?

A. No sir.

Q. You may designate the location of the various signals on the eastbound or governing the movement of trains on the eastbound track with reference to cross streets in Omaha and South Omaha, commencing at Albright.

A. Albright, the next one, is located at about a block west of Q Street, there is no intersection there, and at—

Q. Q Street, South Omaha? A. Yes.

A. —and at M. street, at F. street, at Vinton street, Omaha, at 24th street, and 20th street.

Q. What unusual or abnormal conditions exist or are found at times in and effecting the automatic signals between Council Bluffs and South Omaha causing delays in that territory not noted elsewhere, or not occasioned elsewhere?

A. The principal trouble we have in that territory is caused by the brine and other solution that is dropped by the refrigerator cars and this causes the signals to fail because the salts in this solution deposited on the track form a partial short circuit across the track, and acts the same as if there was a train in the block.

Q. Is the conductivity of the salts deposited affected by humidity?

A. Yes, sir, the circuits work fairly well in dry weather, but as soon as the earth is saturated with moisture they immediately put the signals out of service.

Q. Is there any unusual corrosion of the metal caused by the brine dripping on the signal apparatus?

399 A. Yes sir, we have a great deal of trouble from that, the bonding has to be renewed about once a year and sometimes oftener for that territory, and any piece of apparatus or the wires carried under the tracks is specially subject to corrosion owing to the solution deposited.

Q. Would that be augmented by increased stoppage of the trains containing cars dripping brine?

A. Yes, sir, it would decidedly, as long as the cars are in motion the solution is not spilled near so much as when the cars are stopped. Each stopping and starting and jerking of the cars causes it to be spilled out more than when the cars are kept in motion.

Q. What efforts have you made to correct this and what remedy have you found, if any?

A. Well, we have made a number of efforts, that of keeping the ballast away from the rails is the principal one and the shortening of the track, we have had to shorten almost all of the track sections between Council Bluffs and Albright and some of them we have had to cut twice, that is a track section may extend the length of the block, if there is too much trouble from short circuiting, then the track section has to be made shorter; we have one case where there are four track sections in a block.

Q. If the percentage of trains handling meat under refrigeration that was stopped or might be stopped on the track should be increased, would the delays to other trains by reason of the signal failures be increased in the same proportion?

A. Yes, sir.

Q. If a train was stopped in the one block by the operation of signals, would all the trains in the block district be in consequence stopped, if following each other at shortest possible intervals as prescribed under the rules?

A. Yes sir, the stopping of one train there would stop all the following trains.

Q. Does this trouble that you have suggested and detailed exist west of South Omaha or of Gilmore?

A. Not west of Albright.

Q. Have you been employed in a similar service on other roads? A. Yes, sir.

Q. And have you gone through the same experience with reference to these difficulties?

A. Well, the only other road that I was employed on we had no refrigerator cars to speak of and therefore had no trouble of that kind.

Q. What department do you report to, if any?

A. Report to the superintendent, Division Superintendent.

Q. With reference to construction, from what department do you receive orders?

A. I do not have anything to do with the construction.

Q. Nor do you receive orders from any department other than the Superintendent with reference to repairs?

A. No, sir, except from the Superintendent.

Witness Excused.

401 A. D. Schermerhorn, recalled on behalf of defendants, being first duly sworn, testified as follows:

Examined in Chief,

By Mr. Rich:

Q. Are you familiar with the orders given and the work done in reference to the ballast as affecting the automatic block signal service?

A. Yes, I know what orders are given with reference to—

Q. Well, you heard the last witness testify did you, with reference to the ballast being kept from the rail?

A. Yes, sir.

Q. Do you know who originally gave that order, from what department it emanated?

A. It came to me from the department of the Superintendent of the division, Mr. Ware.

Q. Have you any orders from the Engineering Department that come to you signed by Mr. Berry with reference to the manner of handling the gravel in connection with these difficulties that the witness just on the stand has detailed?

A. No, sir, I think these orders with reference to this came since Mr. Berry left here.

Q. Does the Burlington road own the track through the Stock Yards which it uses in making a connection with the Union Pacific at South Omaha? A. No sir, I think not.

Q. What company owns that track?

A. The Union Stock Yards Company.

Q. Do you know the length of that track from the Burlington track to a connection with the Union Pacific?

402 A. About 2150 feet.

Q. Do you know when the Burlington began to use the track that is used at present through the Stock Yards to a connection with the Union Pacific in South Omaha?

A. No sir, I do not remember the date—you mean by their through trains?

Q. Yes; the trains that run between the connection at South Omaha and Gilmore?

A. No sir, I don't remember the date of that.

Q. I believe you testified that the Missouri Pacific uses a track through the Stock Yards that connects with the Union Pacific at South Omaha at about N. street? A. Yes, sir.

Q. Do you know whether the Missouri Pacific owns that track or whether it is owned by the Stock Yards?

A. Owned by the Stock Yards Company.

Q. The Missouri Pacific does own the track, does it not, that comes in from the north and runs down into or near the north line of the Stock Yards? A. Yes, sir.

Q. And do you know the length of the track owned by the Stock Yards but used by the Missouri Pacific as I have indicated from the connection in the north part or near the north line of the Stock Yards to a connection with the Union Pacific at N street? A. About 1200 feet.

Q. And is a part of this same track used by the Missouri Pacific used by the Burlington in making its connections?

A. Yes, sir.

403 Q. About how many feet of the track the Missouri Pacific uses is used by the Burlington?

A. About 800 feet.

Q. This track was laid about when, if you know?

A. It was laid during the season of 1893.

Q. Where do you obtain your information for the answers you have just given?

A. Well, from personal knowledge excepting as to the ownership of the length of track between the Union Pacific track

and the Missouri Pacific and the Burlington; that information I obtained from Union Stock Yards Company maps of the South Omaha Yards.

Q. Is there a track connecting with the main line of the Union Pacific that connects with the Stock Yards line or track used by these two roads?

A. There is a connecting track with the track of these two lines which was laid in April, 1893.

Q. What is the length of that track?

A. 453 feet belonging to the Union Pacific.

Q. I think you have already testified with reference to a connection between the Missouri Pacific Belt line and the Union Pacific at or near F or G street South Omaha; do you know when the Missouri Pacific began the use of that track?

A. In May, 1892.

Q. And when was it practically discontinued as has already been testified to? A. About in January, 1904.

Q. I think you testified the other day that very recently owing to repairs being made that track had been used by Missouri Pacific trains?

404 A. Yes, sir, it was used temporarily one day.

Q. As a matter of fact, however, the time card has never been changed has it to show the discontinuance of that track by the Missouri Pacific? A. No sir.

Cross Examination,

By Mr. Kellogg:

Q. The last track you refer to is the Y track which on this map runs into a red track connecting with the Great Western grain terminals, isn't it? A. Yes sir, the Great Western—

Q. The red track on this map is the Great Western grain terminal isn't it, and the one you refer to is the one that runs in to that red line on this map?

A. Yes sir, practically the red track.

By Mr. Rich: Q. The map to which your attention has been directed shows that the Missouri Pacific belt line is in the shape of a Y; you say state whether or not the northern branch of that Y has been taken out as shown on the map?

A. Yes sir, it has.

Q. And how many years ago, or when was it taken out?

A. Several years ago it was taken up by the Missouri Pacific Company and we have no record of just when it was done.

By Mr. Kellogg: Q. But the other is still there?

A. Yes sir.

Q. Now the other track which you refer to which the Missouri Pacific uses, is the lead track running through the center of the Union Stock Yards tracks, is it not?

405 A. Running between two other tracks, yes sir.

Q. And connects with the Missouri Pacific main line of road at South Omaha? A. Yes sir.

Q. The track which you refer to which belongs, as you say, to the Union Stock Yards Railway Company is a track running through the center of the Union Stock yards tracks about 800 feet long you say?

A. Well, it is longer than that. There is 800 feet of it used jointly by the Burlington and Union Pacific.

Q. Well, about how much of it belongs to the Union Stock yards?

A. Well, about 1200 feet in the case of the Missouri Pacific connection and about 2150 feet in case of the Burlington connection.

Q. That they own? A. Yes sir.

Q. Now that track connects with the Union Pacific tracks?

A. Yes sir.

Q. And the tracks of the Belt Line of the Missouri Pacific connect with that track?

A. The Belt Line and the Missouri Pacific is the same, just the same track.

Q. Well, that is what I mean. They connect with that track? A. Yes sir.

A. Yes sir.

Q. And the Burlington connects with that track?

A. Yes sir.

Q. And that track through the Union Stock Yards is used by the Missouri Pacific and by the Burlington road to connect direct with the Union Pacific tracks? A. Yes sir.

106 Q. Do they lease it or under what conditions do they have it, do you know? *

A. From the Union Stock Yards Company, no sir, I do not.

Q. Prior to the construction of the Union Stock Yards tracks the Burlington and Missouri Pacific also connected with the Union Pacific tracks?

A. No, sir, they had no tracks until the Union Stock Yards Company constructed theirs.

Q. Well, when the Union Stock Yards was first constructed the Missouri Pacific and the Burlington connected with tracks on the right of way of the Union Pacific did they not? A. No sir, not exactly.

Q. They connected through the Stock Yards track did they?

A. Well, each road had an independent connection with the Stock Yards tracks.

Witness excused.

407 Mr. Park, recalled on

Cross Examination,

By Mr. Stickney:

Q. I think that I recollect that in conversation with you the other day you stated that Sherman gravel as ballast had a tendency to short circuit or interfere with the working of the signals?

A. There is some little mineral in it that has that effect.

Q. Is this line between Albright and the bridge ballasted with that gravel? A. Not all of it.

Q. A portion of it?

A. There is about two miles that is not ballasted.

Q. Where is the ballasted portion?

A. I couldn't describe that definitely, but I think that all of the two miles is between Omaha and South Omaha.

Mr. Rich: Q. And that is the reason for the order that was issued to keep the ballast from the rail?

A. Not necessarily; as I understand it, the salt deposits from this car would form a connection between the ballast and the rail if the ballast was close up to it. The idea was to make an eye between the ties and keep the gravel from the rail.

By Mr. Stickney: Q. The question in my mind was, whether it was the salt or that Sherman gravel, or the two combined; do you know whether the salt has the same effect on ordinary gravel ballast?

A. No, sir, I have had no experience with it on other
408 gravel.

By Mr. Rich: Q. Well, you have just stated, have you not, that the portion of the track or the greater portion of the track between South Omaha and the Union Stock Yards, is not ballasted with Sherman gravel?

A. I believe there is about two miles that is not ballasted.

Q. And that is where the difficulty has been experienced?

A. I think the difficulty would be experienced on the dirt as well as the gravel if it was encrusted with the salt. We do not have as much trouble outside of that limit because there are fewer cars transferred.

By Mr. Stickney: Q. But you have trouble?

A. We have signal failures.

Q. Due, as you suppose to the Sherman gravel?

A. Well, not necessarily. We have the failures from different causes.

Q. Yes, but you have failures, that you trace direct to the Sherman gravel?

A. Well, it might be a short circuit, we couldn't tell exactly what caused it.

By Mr. Rich: Q. Well, you have the signal failures where you have dirt as well as where you have the Sherman gravel?

A. Yes sir.

By Mr. Stickney: Q. You have no dirt ballast, have you where you have signals except here?

A. I don't recall any signals on mud ballast except 409 here.

Mr. Rich: You may look at Exhibit 14, and state whether or not that is a statement of the movement of trains for the month of May over any part of the Union Pacific road?

A. This is a statement of trains crossing the Missouri River bridge during May 1906.

Q. Do you know what that statement is taken from?

A. It is taken from the auditor's records.

Mr. Rich: Defendant offers in evidence Exhibit 14, which is received and the same, or a true copy thereof is made a part of these proceedings.

By Mr. Kellogg: Q. Well, Mr. Park, this is taken from your auditor's records, you say?

A. Yes sir.

Q. Now, that includes every movement on any part of the Union Pacific line between Council Bluffs and the west end of the yards at 10th street or 11th street Omaha, does it not?

A. I should say it was between 6th street and Council Bluffs transfer.

Q. Well, do you know whether that point is taken at the same point you divided the trains the other day?

A. A similar statement for trains?

Q. Yes. A. Yes, it is a similar statement.

Q. Well, at that time it was stated that it was about 11th street.

A. Well, the freight trains, the trains going into the freight yard would diverge at 6th street and those going into 410 the passenger depot would also diverge there, and this is a movement of trains crossing the Missouri River bridge.

Q. Well, does it include any movements on to the bridge?

A. Yes sir, all movements over the bridge.

Q. Well, on to the bridge that don't go across?

A. I couldn't say as to that.

Q. Now, doesn't that, as a matter of fact, include every movement of trains out on to the bridge and back to the 6th street yard?

A. I couldn't say as to that.

Q. You furnish each company do you not, with a statement of all trains running between Council Bluffs and the Omaha station, including freight, light engines, and all movements?

A. Yes sir.

Q. So that any one of the tenant companies, including the Great Western, under the decree can figure up the total number of movements across the bridge?

A. The bills are made against the companies on the figures furnished them.

Q. So that each company has an accurate statement of the total number of trains crossing that bridge?

A. Presumed to be.

Q. Well, it is supposed to be accurate?

A. Yes sir.

Q. Now who is your auditor? Who made up this statement? A. Mr. W. C. Bartlett.

Q. You have no personal knowledge of this statement?

A. No sir.

Q. It is furnished you by the Auditor, Mr. Bartlett?

A. Yes sir.

Witness excused.

411 H. B. Stalder, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Examined in Chief,

By Mr. Rich:

Q. What is your business? A. Switchman.

Q. For the Union Pacific? A. Yes sir.

Q. How long have you been in the employ of the Union Pacific? A. Since August 11, 1880.

Q. At Omaha during all that time? A. Yes sir.

Q. And what position have you held since 1880?

A. I was night yard master for 19½ years, switch tender up at 20th street, and the last two months I have started in switching again.

Q. How long were you switchman at 20th street?

A. About 5 years and a half.

Q. And you say you held that position up to about two months ago?

A. Well, I commenced the first of May.

Q. And since that time what have your duties been?

A. Switchman.

Q. Where? A. In the Omaha yard.

Q. Do you remember when the connections of the Great Western were completed so that trains and cars were run in over the track that led to the freight station at 16th and Leavenworth or near there?

412 A. I don't remember the exact date.

Q. It has been a year or more?

A. Yes sir.

Q. And you are familiar with the manner of the connection between the Union Pacific and the Great Western track at 20th street? A. Yes sir.

By Mr. Stickney:

Q. In case either the Chicago Rock Island, or the Northwestern or the Milwaukee during the last eight or ten years, had a car of freight for delivery in Omaha to an industry on Omaha tracks or to a Union Pacific team track, how and where would that car be delivered to the Union Pacific.

A. It would be delivered prior to the time that we changed it up to the 20th street, it would be delivered at 10th street since we have been receiving up at 20th street it would be delivered at 20th street.

Q. Now since the Great Western has had its connection at 20th Street, in case a car was brought in to Omaha by the Missouri Pacific or the Burlington or the M. & O., for delivery to the Great Western, how would that delivery be made?

A. It would be delivered to the Union Pacific at the lower yard.

Q. And delivered by the Union Pacific where?

A. Delivered if it was for the Great Western, brought up by the Union Pacific switch engine and delivered to the Great Western on their lead No. 1.

Q. Over the 20th street connection? A. Yes sir.

Q. During your service at 20th street have you known of cars of grain being delivered to the Great Western for other connections to the Independent elevators?

413 A. No sir.

Q. You may state whether deliveries made by the Union Pacific switch engine from other roads, tenant roads, to the Great Western at 16th street, or deliveries made by all of the tenant lines with their own road engines or switch into the Great Western connection at 20th street would result in the greatest confusion or the greatest congestion, which of the two methods?

A. Why, the more engines that you cross over those tracks, the more congestion you will have, especially on the main line.

Q. Then the delivery by the Union Pacific would result in less confusion and less congestion than if the delivery were allowed to be made by all of the tenant lines?

A. Yes sir.

Q. What about the grade of the Chicago Great Western track at 20th street?

A. It is an incline upon the bridge.

Q. Up on to the Great Western bridge? A. Yes sir.

Q. If the tenant lines were allowed to make these deliveries direct would the engines and cars of the other roads be obliged to cross over more switches than the Union Pacific in making the delivery itself? A. Yes sir.

Q. In case of a great Western train coming from the west over the Union Pacific east bound track and desiring to run in on to the Great Western connection at 20th street, state what switches and what tracks it is necessary for this train to cross?

414 A. You will have to throw five switches, three puzzles and two single switches.

Q. Is it necessary for the train to come to a full stop in making this crossing? A. Yes sir.

Q. You may describe the puzzle switches you refer to?

A. Well, they are eight point switches, they are more hazardous than a single switch.

Q. More complicated also than a single switch?

A. Yes sir.

Q. Now what makes these switches necessary.

A. Why, so that we can go four different ways on them.

Q. Well, if you had room for just as many more tracks then that would not necessitate the switches, would it?

A. It would not be as convenient.

Q. These switches shorten up the leads and concentrate in a shorter space? A. Yes sir.

Q. It is necessary to exercise any care with reference to these switches either in cleaning them from dirt or in the winter cleaning them from snow.

A. Oh, yes, you have got to be constantly after them keeping them clean, and they are very easily clogged up in the winter time.

Q. Now, in the case of a Great Western train, or a train of any other line coming from the west over the eastbound track, what is the switch you first throw to let that train into the Great Western tracks?

A. The first switch would be the eastbound cross over.

415 Q. Is it necessary for the train to come to a full stop in order to throw the switch? A. Yes sir.

Q. In passing over that switch, the next track to that is the westbound main line? A. Yes sir.

Q. And what switch is necessary to be thrown next?

A. The next one would be—they have all got to be thrown unless they would just happen to be right, you know of course, the main line switch, if you were coming in over the eastbound main line, the main line switch would be right on the west-

bound main track, but then there is the middle puzzle and the north puzzle that would be wrong; and the single switch leading into the Great Western.

Q. Now, then, after the engine, for instance, pulling this train had passed from the eastbound main line to the westbound and is partially across the westbound main line, is it necessary in the operation of these switches, for the train to come to a full stop?

A. No sir, you don't let them in until you have got them all lined up.

Q. Then a train of any length passing over this connection there is a period of time when that train is standing on or across the westbound and the eastbound main line both?

A. Yes sir.

Q. And blocking business, movements both ways on both lines? A. Yes sir.

By Mr. Kellogg: Q. Did you ever know a Great
416 Western train coming from the West to go into the Twentieth Street yards? A. Yes sir.

Q. When? A. They do it every day.

Q. Coming from the West? A. Yes sir.

Q. Run into the Twentieth Street yards? A. Yes sir.

Q. Well, now, if that is the case, any other engine of any other company, including the Union Pacific, would run over the same switches running into the Great Western Twentieth Street yards, wouldn't they?

A. If they run into the Great Western yards.

Q. And would use both the switches on your main line in exactly the same way as the Great Western? A. Yes sir.

Q. And a train coming from the West and going in to the Union Pacific Twentieth street yards at the west end, would use both switches on the main lines of the Union Pacific in the same way? A. Yes sir.

Q. So that the main line tracks of the Union Pacific would be used just exactly the same whether they were going into the Great Western Twentieth Street Yards or into the Union Pacific Twentieth street yards? A. No, sir.

Q. The main line switches I am speaking of?

A. The main line switches would.

Q. Who do you refer to as the tenant lines?

417 A. I refer to the Rock Island, Milwaukee, Northwestern and Great Western.

Q. Now, if any one of those Companies bring grain, we will say, or any freight to be delivered to the Great Western Twentieth Street yards today, where do they leave it?

A. They do not bring any.

Q. (Read the question) (Question repeated)

A. Why, they would naturally deliver it to us.

Q. At what yard? A. At Twentieth street on No. 5.

Q. They would haul it right up to the west end of the Twentieth Street yard and back it right down into your Twentieth street yard?

A. Yes, sir, that is, if they were to do that.

Q. And you would take it with your engine and switch it into the Great Western yard? A. Yes sir.

Q. Now, to get into the Union Pacific Twentieth Street yards, they use both switches on the main line at the west end of the Twentieth Street yards?

A. Not both the main line switches.

Q. Well, they use the same main line switch that they would to push it into the Great Western?

A. They use the westbound main line switch and back right down on No. 5.

Q. Just as they would if the train backed into the Great Western? A. No sir.

Q. They use the same switch and the same cross-over to go into the Great Western Yards from the west end? A. No sir.

Q. Why not?

418 A. Because we have only one switch to throw to deliver it to us.

Q. I am speaking of the main line switch on the Union Pacific? A. Yes sir.

Q. Use the same switch, don't they? A. Yes sir.

Q. And use the same main line switch they would if they backed into the Great Western? A. Yes sir.

Q. Now, when you would enter it you would use the other switches, wouldn't you?

A. We would use the inside switches.

Q. But the first delivery to the Twentieth Street yards would be exactly the same main line switch as the delivery to the Great Western yards?

A. Yes sir, that is, if they were to deliver that way, they would deliver right over the westbound main line.

By Mr. Rich: Q. In case of cars brought from the East by one of the tenant lines, say ten cars where half of them were for delivery on the Union Pacific track, and the other half for delivery to the Great Western track, if they are allowed, how many more movements would that take on the part of the road making that delivery than if they were all shoved right in on the Union Pacific sidetrack?

A. It would take one extra movement. That is, if the cars, if they were all switched out together.

419 Q. But if the cars were set in there irregular then you would have to shove one on the Union Pacific track and then a movement on the main line of the Great Western

and then back on the main line of the Union Pacific switch, and so on until they were all delivered? A. Yes sir.

Q. Now in deliveries by the Union Pacific to the Great Western can be made at times can they not, then the cars can all be bunched and made at once? A. Yes sir.

Q. Or they can be made by the Union Pacific at opportune time when the tracks are not congested by the usual movement of trains? A. Yes sir.

By Mr. Kellogg: Q. Now when any company brings cars out to be delivered to two different companies, they are not all mixed up, intermingled in trains are they?

A. Well, that depends a great deal on circumstances, they are sometimes on the Great Western.

Q. Well, the Great Western has yards at Council Bluffs haven't they? A. Yes sir.

Q. And the other companies have yards at Council Bluffs? A. Yes sir.

Q. And when they have cars for two different companies those cars for each company are placed by themselves, aren't they? A. No sir, not always.

Q. Well, that is the usual way, isn't it?

A. Well, that is supposed to be the customary way.

420 Q. And that is the way companies usually do?

A. Yes sir.

Q. And the Great Western violates the custom, does it?

A. Sometimes.

Q. Sometimes all the companies do, don't they?

A. The Union Pacific does sometimes, yes sir.

Q. You mean when the Union Pacific takes cars out of the 20th street yards?

A. It can keep north of the main line track.

Q. And so can any other company, can't they?

A. No sir.

Q. Why not?

A. Because these other companies are not allowed to use this track.

Q. You make them run out on your main line track?

A. Well, we have usually got those tracks occupied.

Q. Well, if you could run on there they could if you would let them?

A. Oh, they could if we would get up out of the way.

Q. You are simply referring to the time when the Union Pacific shall take the cars out of the 20th street yard and put them into the Great Western yards?

A. That is what I am referring to.

By Mr. Rich: Q. If all roads made deliveries at that point you would have to leave those tracks open all the time?

A. Yes sir, most assuredly.

421 Q. In case of delivery to the tracks at 20th street or to the Great Western track is there any difference in the distance that cars have to be shoved?

A. Yes sir, quite a difference.

Q. What is the difference?

A. Well, they would have to go about 350 feet to our No. 5 track, have to go about 850 feet to the Great Western.

Q. And in going in you said there was an up grade on the Great Western?

A. It is up incline on the bridge, yes sir.

Q. Then would there be any difference in time that the tracks of the Union Pacific were filled in switching either to the Great Western or to the Union Pacific?

A. Oh, yes, quite a bit.

Q. Where would the greater time be used in switching to the Union Pacific or Great Western?

A. Well, we would have to throw three more switches and they would have to go about 500 feet further to their receiving track.

Q. Now, at the present time no other road than the Great Western and Union Pacific use that cross over from the west-bound to the eastbound main line at 20th street for the delivery of any cars? A. No sir.

Q. If the Rock Island has any cars to deliver it delivers them at 6th street? A. Yes sir.

Q. And all the other deliveries of cars come over the west-bound main track? A. Yes sir.

422 Q. Is there a D rail near this point on the Great Western track? A. Yes sir.

Q. What is the purpose of that?

A. That is after the switch is closed when there is nothing to come down this side of the bridge, it is right on the bridge.

Q. That is it is to protect the grade at that point?

A. Yes sir.

By Mr. Stickney: Q. You say there is no other road besides the Great Western and Union Pacific delivers cars in your 20th street yard?

By Mr. Rich: From the west, Mr. Stickney.

A. From the west.

By Mr. Stickney: Q. The Great Western does not deliver any cars in to your 20th street cars from the west do they?

A. Some times?

Q. What cars do they deliver in there?

A. Well, I don't know what they are loaded with, they are cars delivered to us.

Q. From the west?

A. Yes sir, that is from your independent elevators.

Q. From the Independent Elevator they deliver them to you there do they? A. Yes sir.

Q. Are you sure of that? A. Yes sir.

Q. You are just as sure of that as you are of a great many other things that you have testified to, aren't you?

A. Yes sir, I am.

423 Q. Now you said if the Great Western road brought over a train of cars delivered, some of them to be delivered to your 20th street yard and some to its own yard and they were all mixed up, that the Great Western would have to go up there and back a car in on your yard and then pull out and back a car in on its yard, and then pull up and back another car on to your yard, etc., that would be the way of doing it would it? A. Yes sir.

Q. Now if the Great Western or any other company brought over a mixed train in that same way, and put on to your 20th street yard before you could deliver the cars that belong to the Great Western you would have to pull up, wouldn't you, throw one in on to the Great Western and throw another one on to another side track and then pull up again and throw in and go through that same motion.

A. No we would use the north lead to do that with you know.

Q. Well, you would have to go through the same motions, wouldn't you?

A. We would have to go through the same motions, certainly but we would not be depriving anybody else from using the middle lead.

Q. The Great Western could do the same thing couldn't they? A. No sir.

Q. Do you know anything about the contract between the Union Pacific and the Great Western in regard to that connecting track with the elevator?

A. All I know is they have a right to use that to run up there on, don't know as they have any right to switch on there.

Q. Couldn't they switch on that?

424 A. I don't know as they have any right to switch there.

Q. Well, if they have a right to do it could they do it, could they switch without going on to the main track?

A. They could if they had the right to on the north lead.

Q. You don't know what the contract is?

A. Not with the Great Western, no sir.

Q. You are just swearing about something that you don't know anything about when you swear to this?

A. All I know is what my superior officers have told me.

Q. You are swearing about something that you don't know anything about when you say the Great Western has no right to switch there except on the main track?

A. I am going just according to my superior officers' authority.

Q. That is all you know about it?

By Mr. Rich: Q. You know what they have done, don't you?

A. Yes sir.

Q. Well, they haven't been in the habit of switching in that manner? A. No sir.

By Mr. Stickney: Q. Well, do you know whether that track has been put in there that they agreed to?

A. Well, I have not seen any track there.

Q. Now, suppose they have agreed to put in a track there that we could switch on and haven't done it, whose fault would that be the Great Western or Union Pacific?

By Mr. Rich: Objected to as immaterial, calling for a conclusion.

425 A. I haven't seen any track there yet, I don't know as you could put a track in there with the conditions that there is at the present time.

Q. Well, suppose the Union Pacific had agreed to lengthen out that bridge and put in another track there so we could do that and haven't done it, now whose fault is it that we haven't got a track there to switch on, the Great Western or the Union Pacific?

By Mr. Rich: Objected to as immaterial.

By Mr. Rich: Q. Do you mean to tell Mr. Stickney that the Great Western delivers all of its cars from the west on the Union Pacific 20th street receiving track, or a part only?

A. Only a part. There are times that they have to bring cars back in with them again and deliver them to us that don't go up to the Great Western elevator.

Q. Anything that goes into the Great Western elevator, the Great Western takes them up itself? A. Yes sir.

Q. And don't deliver on the 20th street track?

A. No sir.

By Mr. Stickney: What do you do with cars that we deliver to you on the 20th street track?

A. We distribute them to the different lines that we receive them from?

Q. Well, you receive them from the Great Western in this

case, I am talking about the cars that you say the Great Western deliver to you, what do you do with them?

426 A. We distribute them to the connecting lines that they belong to, we give you cars—

Q. You don't mean to say that now, all the other witnesses have testified—

A. —Now we give you cars and you will take them up to the Independent elevator, and you will unload them, consequently when you bring those cars back we have got to deliver them back to the road we receive them from, don't we?

Q. Where do you get the cars that you deliver to us?

A. Well, we get them from the Missouri Pacific or the M. & O. we can get them from the M. & O.

Q. You can get them, but have you ever got them, or are you swearing to something you think might be so?

A. They are carded that way.

Q. If that is so, which are you doing, swearing then to something you think might happen, or something that has happened? A. It has happened.

Q. How much further did you say that you had to move cars to deliver them on the Great Western tracks than on your 5th street track? A. About 500 feet.

Q. Then this map that we have here and that the engineers have made with such great care, is all wrong, isn't it?

A. It must be according to that.

Q. You will swear that it is 500 feet further?

A. I will swear that it is 849 feet to your car track.

Q. Well, will you swear it is how many feet further?

A. Well, it is about 500 feet.

Q. Then this map here is all wrong?

By Mr. Rich: Objected to as incompetent and immaterial.

Witness excused.

427 Mr. Shanahan, a witness recalled on behalf of defendant, upon direct examination by Mr. Rich, testified as follows:

Q. Mr. Shanahan, does the Chicago, Milwaukee, Northwestern and Rock Island deliver cars to the Union Pacific at 20th street for transfer to the B. & M.?

A. Only for industries on that connection.

Q. For industries on the B. & M. track?

A. Only for different industries on the different connections.

By Mr. Kellogg: Q. What different connections?

A. Missouri Pacific, B. & M., and M. & O.

By Mr. Rich: Q. Do the three roads that I have named

also make deliveries of cars for the east at 20th street which the Union Pacific is to deliver in turn to the Burlington transfer track at 5th and Douglas? A. Yes sir.

Q. Do you know of the receipt of cars of grain by the Union Pacific from the Chicago & Northwestern at Cass street that have been delivered to the Chicago & Northwestern at 20th street by the Union Pacific? A. Yes sir.

Q. And do you know of cars of grain received from the Missouri Pacific at Davenport street delivered by the Union Pacific to the Chicago & Great Western at 20th street?

A. I don't know of the Missouri.

Q. Do you know of grain received from the B. & M. at 5th and Douglas and delivered by the Union Pacific to the Chicago Great Western at 20th street?

428 A. Yes sir.

Q. Have deliveries of that character been of a recent date during the past 30, 60 or 90 days? A. Yes sir.

Q. Would you personally know of the delivery of any cars of grain by the Chicago & Northwestern to the Union Pacific which were switched by the Union Pacific to the Chicago Great Western at 20th street that were for delivery to the Updike Grain Co. at South Omaha?

A. Only by the records that we have got.

Q. Do you remember such a record as that instance?

A. Yes, sir, our records show it.

Q. Is it one of your duties, or has it been in the past to keep a record or a minute of deliveries of the kind you have just testified about? A. It has, yes sir.

Q. Where is that record kept?

A. In the General Yard Master's office.

Q. What kind of a record do you keep for your original or first entry of the movement of a car?

A. There is an original made and two carbon copies and they are all three signed, the original is signed by the receiving road's agent, or in case the Union Pacific delivers a string of cars to the Great Western we take that interchange over there and the Great Western agent signs for receiving those cars.

Q. What becomes of that original, is that the one that is kept at the yard master's office?

429 A. No sir, that original is kept by the car service agent, or otherwise the auditor of equipment service, and kept on record in his office.

Q. Now it has been a part of your duties has it, to take these blanks and make these original entries on them?

A. It is at times, yes sir.

Q. Giving the number of the car and its movements, and so on? A. Yes, sir, and destination and contents.

Q. Have you any means of determining for an ordinary in-

spection of a car that is delivered to the Union Pacific by a tenant line at 20th street whether that car is destined for the freight house on the Great Western track at 16th and Leavenworth or destined for the Independent elevator?

A. In a great many case no, in some cases yes.

Q. But in a great many cases there is nothing to indicate whether it is freight or—

A. They live up to the rules in a great many cases and follow out the instructions, otherwise they don't.

By Mr. Kellogg: Q. Where is Cass Street?

A. About five blocks north of Douglas.

Q. That is away over in North Omaha, isn't it?

A. Well, yes, you might call it North Omaha, it is the north end of 12th street.

Q. And when you said the Northwestern delivers cars to your line at Cass Street to be delivered to the Great Western grain terminal, you meant—

A. The Missouri at Cass Street, the M. & O. and Northwestern delivers at Nicholas.

430 Q. You said the Northwestern delivers cars at some street there to be delivered to the Great Western, the Northwestern don't run into North Omaha at all, does it?

A. Oh, yes.

Q. That is the M. & O. isn't it?

A. No sir, the Northwestern in Nebraska runs in there.

Q. Well the Missouri Pacific at Cass street, you say?

A. Yes sir.

Q. Well, now you have received cars from the Missouri Pacific at Cass street to be delivered to the Great Western grain terminal?

A. Well, that I could not say, as to the Missouri Pacific.

Q. Well, what company was it you said you had received cars for at Cass street to be delivered to the Great Western?

A. The M. & O., the Northwestern in Nebraska and the B. & M.

Q. Well, grain cars were they? A. Yes sir.

Q. To be delivered where?

A. To the Great Western at 20th street.

Q. Well, now, the Great Western has no line in North Omaha, has it? A. No sir.

Q. No other way to get it from the Northwestern to the Great Western except over your line is there?

A. Not that I know of, there shouldn't be anyhow.

Q. Well, then, you also said that the Milwaukee and Northwestern and the Rock Island only delivers cars to 20th street for transfer to local industries?

A. Different connections, wherever they go.

431 Q. But for local industries?

A. Yes sir, that is all.

Q. Not through cars?

A. I haven't seen any through cars, no sir.

Witness excused.

432 J. D. Clancy, a witness produced on behalf of defendant, being first duly sworn testified as follows:

Examined-in-Chief,

By Mr. Rich:

Q. What is your business?

A. Yard Dispatcher for the Union Pacific.

Q. At Omaha? A. Yes sir.

Q. How long have you held that position?

A. March 17th, I believe.

Q. And how long have you been in the employ of the company? A. Since May 8, 1892.

Q. Mr. Clancy, did you check the movement of trains between 11th street and the Summit during the week in June, commencing on the 11th and ending on the 17th inclusive?

A. Yes sir.

Q. You may state whether the exhibits I hold in my hand, seven in number, show the results of that check?

A. Yes sir, they do.

Q. Now, have you tabulated or digested for each 24 hours the movements as shown on the seven exhibits? A. Yes sir.

Q. You may state whether the two sheets identified as Exhibit 15 is the tabulation just referred to? A. Yes sir.

Q. And that is correct is it? A. Yes sir.

433 Defendant offers in evidence the two sheets Exhibit 15, which are received and the same are a true copy thereof hereto attached and made a part of these proceedings.

By Mr. Stickney: Q. I understand you to say now that the trains on this second sheet headed "Regular Schedule Daily Trains" are included in the total on the first page headed "between Council Bluffs Junction and Omaha?"

A. Yes sir, between Council Bluffs Junction and Omaha are included there.

Q. Then the total number of trains that passed over the bridge in this time was 504 east and 502 west plus 168 back overs east and 172 back overs west, which makes a total number in seven days of 1346 trains, which would be an average of 192 and 2-7 trains a day, that is right, is it?

By Mr. Rich: Objected to as a matter of computation.

A. Yes sir, to the best of my belief.

Q. That does not include light engine movements?

A. No sir, east or west bound.

Q. Have you any record of those?

A. No, I have not, no, sir.

Q. You don't know anything about that?

A. No, there are so many there they go out of the east end of the yard at 6th street there, and out of the round house at Council Bluffs, that we don't keep them at all.

Q. The total number of movements of trains between 11th street Omaha and Summit Junction during the week, was 1537 trains east and 1489 trains west, movements of trains?

434 A. Yes, cars and engines, the movement was made and the track was occupied, it is immaterial whether there was one car or 20.

Q. That makes an average of 432 trains a day west of the depot and only 19 east; now there is something wrong about that?

Adjournment was here taken to 2:30 P. M.

Chicago Great Western Ry. Co.,

vs.

Union Pacific Railway Co.

Testimony taken Tuesday afternoon, June 19th, 1906.

Witnesses: J. D. Clancy, W. C. Bartlett, W. D. Lincoln.

Defendant rests.

Plaintiff's Witnesses: A. L. Mohler, A. B. Stickney.

435 Tuesday, June 19, 1906. 2:30 P. M.

J. D. Clancy, a witness on behalf of the defendant, was examined in chief by Mr. Rich and testified as follows:

Q. You may state whether exhibit 15 includes movements of light engines in either direction between Council Bluffs and Sixth Streets?

A. Between Council Bluffs? No sir, it does not.

Q. You may state whether or not the same exhibit includes the movement of light engines between eleventh street and the summit, or eleventh street and South Omaha?

A. Yes sir; it does.

Q. You may state what proportion of the total movements as shown by your statement, plus the movements of light engines—what proportions of that total, the movement of light engines would constitute?

A. Well, it would average, I suppose, in the neighborhood of, pretty near a third of the totals there a day, in the twenty-four hours, counting light engines east and west bound.

Q. Yes, sir.

Mr. Kellogg: What is he referring to now?

Mr. Rich: East of Sixth street.

Mr. Kellogg: East of Sixth street?

Mr. Rich: Yes, sir.

Mr. Kellogg: The papers show exactly without guess work.

Mr. Rich: Light engines are not included in that; that is not the statement; that is the one of last week.

436 Mr. Kellogg: It covers the entire month of May; it ought to be pretty near accurate.

Q. You mean by that, do you, that the movements of light engines would be about one third of the totals as shown by exhibit 15?

A. That is the grand total; it is for the seven days that 500 is footed there; yes sir, for the seven days.

Q. And to give the grand total then of all movements of every kind over that district, you would add one third to the grand totals of the movement between Council Bluffs and Sixth street as shown on exhibit 15?

A. Yes sir; adding backovers with that.

Q. Yes. A. Yes, sir.

Q. In your estimate of one-third, you include backovers with light engines, do you?

A. No, that is light engines. Now you take Union Pacific engines going over with cars to Council Bluffs, and coming back light. I have no record of them coming back light at all; I just put the switch engines between Omaha yard and the round house over there, both morning and evening.

Q. Does the thirty per cent include backovers, or should the number of backovers be in addition still?

A. In addition; backovers are showing; they have made provision for them; it is taken from the bridge district time card.

Q. The exhibit for the district west of Eleventh street includes the movements of a light engine?

A. Yes sir; both directions.

Q. And west of eleventh street there is no movement equivalent to, or the same as the backover movement?

437 A. Well, only in two cases, they were time carded trains on the time card, so I just put them in as regular trains, entered them on the train sheet, and that would be the I. C. and Missouri Pacific.

Q. Exhibit 15 contains among other things two columns showing the movements east and west between eleventh street, Omaha, and the Summit; showing the movements east 1537, and movements west 1489 for the seven days. You do not mean

by those movements that they all represent trains that move through from eleventh street to the Summit?

A. No, sir.

Q. Or from the Summit to eleventh street?

A. No, sir.

Q. It is your intention, is it, by exhibit 15 to show the movement of every car or engine on either main track between eleventh street and the Summit, that would temporarily block either the east or west bound main tracks? A. Yes, sir.

Q. Does the exhibit 15 include any movement that would not pass out upon either the east or west bound track, or temporarily block them?

A. Well yes sir; it does; the train sheet, where they are merely passenger, it does not interfere with east bound freight trains.

Q. But I mean in either direction?

A. Oh, in either direction, it does.

Q. But there are many movements included in the schedule furnished that might only be for a short distance, or for a short part of the way between eleventh street and the Summit?

A. Yes, sir.

438 And the same is true, is it, with reference to the movement shown between the Summit and Gilmore?

A. Yes, sir.

Q. Does the district included between eleventh street and the Summit include the F. E. & M. V. or Northwestern connection near the Summit?

A. It does, Elkhorn trains moving this way, east bound; it includes them between Eleventh street and the Summit; but if the Elkhorn trains come out of the Elkhorn track going west, it is included between Summit and South Omaha.

Cross Examination,

By Mr. Kellogg:

Q. Referring to the movements of trains across the bridge between Council Bluffs and eleventh street, your statement which you have made does not include, you say, the light engine? A. No, sir.

Q. You think that the light engine movement is about one-third as many as the other?

A. Just about that, as near as I can arrive at it.

Q. That of course, is simply an estimate?

A. Yes, sir.

Q. Does the company keep a record of all movements across the bridge between Council Bluffs bridge Junction on the east side and west end of the bridge or eleventh street?

A. Well, I could not say as to that; all movements of both

west and east bound trains are kept at Council Bluffs Junction.

Q. Council Bluffs Junction? A. Yes, sir.

139 Q. You do not keep those? A. No sir.

Q. And your statement is made from information which you have?

A. Yes sir. I have got the live trains there, that is what we call live trains.

Q. They are shown on your dispatcher sheet?

A. Yes sir.

Q. Now, referring to the columns on your sheet, marked No. 1, in which you give the number of trains both east and west between eleventh street and Summit, that includes as I understand you, every movement?

A. Yes sir.

Q. In other words it includes every switch engine, or car of any kind, crossing eleventh street?

A. Yes sir, west bound.

Q. West bound and east bound?

A. Well, west bound, east bound up west of eleventh street; yes sir.

Q. That is west of eleventh street? A. Yes sir.

Q. That is, if it crosses eleventh street it is included in that column? A. Yes sir.

Q. As a train movement? A. Yes sir.

Q. Eleventh street is at the west end of the Union Pacific 6th street yard, is it not?

A. It is in the west end of the train yards? Yes sir.

Q. It is located at the west end of the passenger yards?

A. Yes sir.

440 Q. So that every train or engine going in and out of the passenger yard would necessarily be included in this?

A. Yes sir; where it moves far enough to take the main line, interfere with the main line.

Q. If it moves onto the main track?

A. Yes sir; that is the idea.

Q. And every engine going in or out of the west end of the 6th street freight yard would be included in this?

A. That is at 11th street?

Q. Yes? A. Yes sir.

Q. Now, there are a great many engines and trains which cross 11th street and are counted in this movement on these sheet which go and come from north Omaha, are there not?

A. From North Omaha?

Q. Well, from the lower level?

A. Yes sir; that crosses over—any train that crosses over.

Q. I refer to the lower level, as on your tracks down at your freight house, your team tracks? A. Yes sir.

Q. And all of the tracks north of the main line track?

A. Yes sir, every train or engine that crosses over.

Now, your machine shops and round houses are north, are they not? A. Yes sir.

Q. So that substantially all your engines come and go from the round houses and machine shops up there?

A. The round houses are located at Council Bluffs?

Q. Your round houses are at Council Bluffs?

A. Yes sir.

441 Q. You have some machine shops and round houses over there, haven't you? I mean some round houses over there, haven't you?

A. Nothing but just shops for shop work on engines, is all.

Q. But all trains and all engines that go and come from the lower yards would cross eleventh street?

A. Yes sir.

Q. And be counted?

A. Yes sir; that is provided they were coming east, if they wanted to give that on it.

Q. Certainly. A. Yes sir.

Q. But they do not come east as far as 11th street?

A. It would be counted at 20th street.

Q. It would be counted just the same? A. Yes sir.

Q. In your count? A. Yes sir.

Q. That is, in your movement? A. Yes sir.

Q. In other words, all switch engines which come in and out of the 20th street, or the 6th street, or the Union Depot yards and go west of 11th street, are counted?

A. That is west of 11th street.

Q. And there are a large number of movements of light engines or switch engines that do not of course, go west of 20th street?

A. Oh, well, of course, there is some of them do, and some of them don't; that is what helps make the railroad.

442 Do I understand you that the large sheets which are in evidence as a part of this statement—

Mr. Rich: They have not been introduced. If you want them introduced, we will introduce them.

Q. Well, the large sheets from which this statement, exhibit No. 15, sheets No. 1 and 2, were made, gives the movement and the place of movement of each train or engine?

A. Yes sir.

Q. So from that you can tell the number of trains which run from the Union Pacific 6th street yards or the Depot to Summit Junction, and from Summit Junction to Albright?

A. Yes sir. By referring to Albright do you have reference to Rock Island Junction?

Q. Yes sir; Rock Island Junction is what I mean.

A. Yes sir, all right.

Q. It appeared by statement which Mr. Rich put in evidence—this is signed by you too—marked Exhibit No. 4, the sheets which I show you are signed J. D. Clancy, are they not?

A. Yes sir. That was for May or a week in May.

Q. That statement purports to give all the passenger trains, freight trains, and light engines between 11th street and Summit Junction, and Summit Junction and Albright?

A. Summit Junction and South Omaha on that.

Q. And Summit Junction and South Omaha?

A. Yes Summit Junction and South Omaha.

Q. For seven days in May, from May 11th to 17th inclusive?

A. Yes sir; that is what it was.

Q. And as I recollect, that shows an average of about ninety-seven trains a day?

443 A. I don't remember what it showed, but that is made up—that includes straight runs from here to South Omaha.

Q. That includes all trains that go from 11th street to Summit Junction?

A. Well, and to South Omaha. Of course, if the trains go from Omaha to South Omaha, it is shown twice there, you understand?

Q. Yes, I understand. A. Yes.

Q. Well, that is what you would consider an average seven days?

A. Well, 'taint the way business is now and the way these bridge runs show up every day, freight movements.

Q. You have no reason to select a seven days there for a time that was less than the average, have you, in time?

A. I made that at the start,—no—I don't remember whether I had any special day or anything of the kind, when I started to make it up.

Q. Is that from records which show the movement every day? A. Every day?

Q. Yes sir. A. Like that?

Q. Yes sir? A. Yes.

Q. So you can make up a statement for one month or two months? A. Yes sir.

Q. Or three months?

A. Well no—well yes; I can since I had been working that long; the position has only been established since March.

Q. According to your statement you can make a
444 statement running from ever since you commenced work-
ing there? A. Yes sir.

Q. You can show the total number of runs that run from
Summit Junction—or run from 11th street to Summit Junc-
tion?

A. 11th Street to South Omaha, from Summit Junction to
South Omaha.

Q. The trains shown on sheet No. 2 coming east and west
bound between 11th street and Summit junction are included?

A. What No. 2?

Q. No; that should be 2, that is No. 2—In sheet No. 2 be-
tween 11th street and Summit Junction, are included in sheet
No. 1? A. Yes sir.

Q. Between 11th street and Summit Junction?

A. Yes sir; that is to show the regular schedule trains.

Q. And the same as between Summit and Gilmore?

A. Yes sir; and that is not there.

Q. No, I understand that. A. Yes.

Mr. Kellogg: I think that is all. That is all. I may want
to recall him for some questions when he and Mr. Chase get
those schedules made.

Re-direct Examination,

By Mr. Rich:

Q. The four sheets signed by yourself, being exhibit 4, show
only the trains that run through?

A. Yes sir; and the light engines also.

Q. And the light engines that run through?

445 A. Yes sir; it does not include all movements, or
where it blocks the main line to interfere with east and
west bound passenger and freight trains; it does not interfere.

Questions by Mr. Kellogg:

Q. You say, if I understand you, it includes all movements
of every kind that goes from 11th street to Summit Junction?

A. Yes sir; and Summit Junction west.

Q. And then all movements that go from Summit Junction
west to the west end of that district, to Albright or wherever
it is—South Omaha? A. Yes sir.

Mr. Kellogg: That is all.

Witness excused.

Mr. Rich: The defendant offers in evidence, exhibits 16, 17,
18, 19, 20, 21 and 22.

Said papers marked as exhibits as above noted are hereto
attached, or true copies thereof, are made a part of this record.

W. C. Bartlett, called as a witness on the part of the
446 defendant, being duly sworn testified as follows:

Direct Examination,

By Mr. Rich:

Q. You are an employe of the Union Pacific? A. I am.

Q. In what department? A. Accounting department.

Q. In that department do you have any particular duties to perform with reference to making up and having control of records that show the movement of tenant lines over the Union Pacific rails between Council Bluffs and South Omaha, or do you have any duties with reference to making up statements to those various tenant lines, showing the amount due under the contracts of the Union Pacific? A. I do.

Q. Did you make up the records yourself, in that department? A. I made the statements.

Q. You made the statements from the record in that department? A. From the record furnished me.

Q. How is that record in that department made up? From what record?

A. From the record furnished me by the party whose business it is to keep track of the movement of these various trains.

Q. Well, the party that keeps track of these movements and makes up the statement for the district between the Union Station in Omaha and Council Bluffs, is stationed, is he not, at Council Bluffs? A. Yes sir.

447 Q. You then, each month, take those records in your office and prepare statements to be sent out to the Milwaukee, Rock Island, Northwestern and Chicago Great Western?

A. I do. I furnish them to the Auditor of Disbursements.

Q. Have you in your possession, or with you, any statements showing the movements of trains over the district from Council Bluffs to Union Station for any particular period?

A. I have.

Q. On which were based statements to the various different lines? A. I have.

Q. You may produce those statements. (Papers produced by witness).

Q. Does this statement consisting of three sheets which you have handed me include the month of May? A. It does.

Q. It includes all of the month of May?

A. The entire month, sir.

Q. And it purports to show the number of engines, baggage, mail and express, coaches, and chair cars, sleepers and diners, freight and caboose, cars upon a wheelage basis, passing from Council Bluffs to Union Station, with reference to the Chicago and Rock Island, Chicago and Milwaukee, Chicago and North

Western, Chicago Great Western, Union Pacific, Chicago, Burlington & Quincy, and K. C. C. B., and Wabash railroads?

A. Yes sir.

Q. Did you make up this statement yourself?

A. I did not. It was made under my supervision.

Q. And based on this statement that I hold in my hand, have you sent out bills for the month of May, to the various tenant lines?

448 A. That statement is furnished to the Auditor of Disbursements.

Q. For that purpose?

A. Who sends out the bills, sir.

Q. You stated that this showed the movement from Council Bluffs to the station, Union Station in Omaha? Is that true, or is it true that it shows the movement between Council Bluffs and the east end of the bridge?

A. The east approach of the Missouri River bridge.

Q. I noticed at the bottom of the third sheet, figures in lead pencil. Whom were those figures made by?

A. By the Auditor of Disbursement's office.

Mr. Rich: The defendant offers in evidence exhibit 23 (consisting of three sheets).

A. That is our office copy, Mr. Rich.

Mr. Rich: Yes: We will want to place a copy instead of this office copy.

By Mr. Stickney: Can you get a copy of the statement? Will you produce a copy of the statement made to the lines which made up this?

Mr. Rich: Yes.

Mr. Stickney: Copy of the statement that was sent out?

A. Copy of the bill you have reference to?

Mr. Stickney: Yes; to the Great Western Company.

Mr. Rich: To the Great Western Company alone?

Mr. Stickney: That includes them all; they are all just alike.

Mr. Rich: For what month, Mr. Stickney?

Mr. Stickney: The month of May is what we are looking at. I daresay that is a mistake of our auditor in making the copies. I would like to look at it and see.

449

By Mr. Rich: Q. Will you get a copy of the bill rendered the Great Western for the month of May?

A. Yes sir.

Mr. Kellogg: How long will it take you to check up that statement?

A. That is 1905 statement, and this is 1906 statement that I have made, sir.

Mr. Stickney: That explains it, sir.

By Mr. Rich: Q. Will you furnish the reporter an exact copy of exhibit 23, to go into the files?

A. Yes sir; And do I understand that you wish a copy of the bill for May, 1906?

Mr. Stickney: No, that is a sufficient explanation of it. I was not very particular anyway about it. I like to know what the trouble with these things is.

Cross Examination,

By Mr. Kellogg:

Q. That statement includes all light engines and every other movement across the bridge?

A. It does to the east approach of the Missouri river bridge.

Q. All of your engines, road engines, which come into the Union station here, are housed here and Council Bluffs, are they?

A. As far as my knowledge serves me, I think they are, sir.

450 Q. And in this statement of movements across the bridge, are a great many light engine movements, are there not? A. There may be, yes sir.

Q. In the statement of the month of May, 1906, under the total of the Union Pacific's east bound freight movements of 951, 592 seem to be light engines?

A. That does not show difference in directions, sir, this statement that I have given you?

Q. It does not? A. No sir.

Q. West bound?

A. It shows the total number for the month.

Q. The west bound, out of a total of 956, 563 seem to be light engines?

A. I have nothing to do with the making of that statement; I do not know anything about it, sir.

Q. Oh, you don't? A. No sir.

Mr. Kellogg: It is the statement Mr. Rich said he was going to testify to, that is exhibit 14 that he put in evidence. Some other expert got at it.

Q. Who did make up that statement exhibit 14?

A. I would judge it was made in the superintendent's office.

Q. Where did you get the information for these statements?

A. For this statement here, sir?

Q. Yes? A. You have reference to this statement here?

Q. Yes.

451 A. They are made up by the man at the Junction.

Q. The man stands there and counts them?

A. Yes sir.

Q. Counts the number of engines?

A. Counts the number of the cars; this statement refers to cars and engines.

Q. Cars and engines? A. Yes sir.

Q. I see. From the engines of course, you get the number of the trains? A. Yes sir.

Q. Train movements? A. (No answer.)

Mr. Rich: That is all, Mr. Bartlett.

Witness excused.

452 W. D. Lincoln, called as a witness on the part of the defendant, having been duly sworn, testified as follows:

Direct Examination,

By Mr. Rich:

Q. Mr. Lincoln, you may examine exhibits 24, 25, 26, 27 and 28, and state what they are.

A. They are all statements showing the reclaim per diem against the C. G. W. for cars switched for them to connecting lines of the Union Pacific at Omaha.

Q. For what months and year?

A. For August, September, October, November and December, 1905.

Q. Have you a record for the present year of the same work or movement?

A. It has not been compiled yet.

Q. Is it being compiled at the present time?

A. It is; yes sir.

Q. This statement gives the initial and number of car in each instance? A. Yes sir.

Q. And then the cars shown on these exhibits you have just described would be handled, received, and delivered in the manner that has been testified to in this case?

A. Cars shown would be handled—that is, they would be received from the C. G. W., and delivered to some of our connections in Omaha. That is what we call an intermediate switching reclaim. The statements show the roads to whom the cars were delivered, and the date.

453 Q. In case of the first item on exhibit 29 for the month of August Missouri Pacific car for delivery to the Missouri Pacific, do you know where that would be received and where that would be delivered?

A. I do not know where it would be received, that is whether it be out at the grain terminal transfer tracks, or whether from the freight housetrack, but would be delivered to the Missouri Pacific in our lower yard.

Q. Did you hear the testimony of Mr. Shanahan and other witnesses with reference to the manner of handling cars in the city of Omaha received from the tenant lines for delivery to other lines, or to terminals, to industrials on Union Pacific tracks, or Union Pacific team tracks, or cars to the contrary received from the Missouri Pacific, M. & O., B. & M., for delivery to the Great Western?

A. I heard part of it.

Q. You heard part of that testimony? A. Yes sir.

Q. What is the record kept? What is the object of the record from which these exhibits were taken?

A. The object is to make a bill—not exactly a bill, but to make a statement to the C. G. W., showing the number of cars, giving the car number and initials, which we switched for them to our different connections, and we get a reclaim of twenty cents per car. We send the statement to the C. G. W. car service department, and they give us credit on their per diem account for the amount due us on the intermediate switching.

Q. Do any of these transfers as found upon these exhibits, represent loaded cars?

454 A. There is no doubt but that some of them are loaded cars. But it don't say whether they are loaded or empty.

Q. Are those bills made out in your office for the purpose you have just indicated, or are these records delivered to some other office from which bills are made and rendered to the Great Western?

A. They are made up in the general yard master's office, and then after they have been certified to by the Agent of the C. G. W., as to their correctness, they are sent to the Auditor of Equipment Service who mails them to the Car Service Department of the C. G. W.

Q. Has this record anything to do with the switching charges?

A. No sir; that is just the per diem.

Mr. Rich: The defendant offers in evidence exhibit 24, 25, 26, 27 and 28.

The papers marked as exhibits above noted are hereto attached, or true copies thereof, and made a part of the record of this case.

Q. On these exhibits at the head of each statement or sheet are the words, "Statement of cars switched by Union Pacific Railroad Company for"—name of some road inserted in a blank, at Omaha; what column on the sheet indicates the road to which the delivery was made?

A. It is under the head of the column marked "contents."

Q. It is in the column marked "contents?" Then, in the column marked "Contents" occur the initials of the railroad to which the delivery was made? A. Yes sir.

455

Cross-Examination,

By Mr. Kellogg:

Q. You do not know where those cars were delivered, do you? A. Where they were delivered?

Q. Yes? A. To the Missouri Pacific?

Q. Yes sir. A. Yes sir.

Q. Where? A. Down in the lower yard.

Q. And they were cars going to industrial tracks on the Missouri Pacific, were they not?

A. I cannot say whether they were or not.

Q. You heard Mr. Shanahan's testimony that those were the deliveries that were made there, didn't you?

A. I heard part of his testimony, yes sir.

Q. Didn't he say that?

A. I could not say now, whether he did or not; I do not remember exactly what he did say about that.

Q. Well, that is in North Omaha?

A. That is in—just north of Davenport street.

Q. I notice most of these deliveries are to the Missouri Pacific?

A. A great many of them are to the Missouri Pacific; yes sir.

Q. The M & O I notice you have here, that is Minneapolis and Omaha?

A. That is the C. St. P., M. & O., yes sir. Their yards are in North Omaha; they are up in the same part of the yard that the Missouri Pacific is—their transfer.

456

Q. The Great Western has no line to their yards either? A. No sir.

Q. Does this statement include any deliveries to the Union Pacific for local industries on the Union Pacific track?

A. No sir.

Mr. Kellogg: That is all.

Re-direct Examination,

By Mr. Rich:

Q. You may examine exhibits 29 to 50 inclusive, and state whether or not those exhibits are of the same character and for the same purpose as exhibits 24 to 29 inclusive, except that the

switching in the exhibits that you hold in your hand is done for different roads than the Great Western—other and different roads?

A. They are the same character and have the same information except that they are done for different roads.

Q. And made up in the same manner.

A. Made up in the same manner.

Q. And contain the same information? A. Yes sir.

Q. You say you are now having exhibits of a similar character for the year 1906 made showing the deliveries to the Chicago Great Western? A. The yard is working on it now.

Q. At this time? A. Yes sir.

Q. They are not yet completed? A. No.

Witness excused.

Mr. Rich: I think that is all, Mr. Kellogg. I may want to put in something later that we have forgotten.

The defendant rests.

457 A. L. Mohler, called as a witness on the part of the plaintiff, being duly sworn, testified as follows:

Direct Examination,

By Mr. Kellogg:

Q. Your name is A. L. Mohler, is it not? A. Yes.

Q. You are the General Manager of the Union Pacific Railroad? A. I am.

Q. How long have you been? A. Over two years.

Q. Do you remember the incident when the Chicago Great Western or the Mason City and Fort Dodge whichever you call it, undertook to deliver a car of freight to the Rock Island road at its connection at Albright?

A. I had a report made to me of that character.

Q. You were informed that such an attempt would be made, before that, were you not?

A. I cannot recall distinctly whether I was informed directly or indirectly.

Q. You knew that it would be made, and knew it both from Mr. Stickney and from others, did you not?

A. I do not know that I knew exactly how it would be made.

Q. You knew we were going to undertake to make connections with the Rock Island road at Albright, didn't you?

A. No, I don't believe I did.

Q. You did not? A. No.

Q. Did you have any talk with Mr. Park about that?

458 A. I talked with Mr. Park after talking with the counsel of our company.

Q. And you directed Mr. Park, did you, to refuse to allow the Great Western to make deliveries?

A. Under advice of the counsel, under the terms of the contract as we understood it.

Q. Do I understand your answer that you did direct Mr. Park to refuse to allow the Great Western to make connection with the Rock Island?

A. Under the advice of counsel, yes.

Q. You say under the contract. You knew the Great Western at that time was operating under the decree and injunction of the United States court, didn't you?

A. I suppose the same as other tenants.

Q. Well, did you know that they were operating under the injunction and decree of the United States Court?

A. Certainly, it was supposed to be the same as other tenants.

Q. That is your supposition?

A. That is the instructions I have from the legal department.

Q. So you directed Mr. Parks to refuse to allow the Great Western to run its engines onto the tracks of the Rock Island at Albright? A. Under the advice of our counsel, yes.

Q. Now, Mr. Mohler, did you read and consider the injunction before you did that?

A. I read the injunction and as I read the injunction and under the advice that I had, because we have a law department which interprets the law for us?

Q. Certainly.

459 A. I gave the instructions accordingly,

Q. Did you also direct Mr. Park to refuse to allow the Rock Island Company to make deliveries onto the Great Western grain terminal tracks?

A. We directed Mr. Park to accord to the Rock Island Company and the Great Western Company the same practice that had been followed by other tenants.

Q. That is not the question. I asked you, did you direct Mr. Park to refuse to allow the Rock Island Company to run its engines onto the Great Western grain terminals?

A. Yes.

Q. And put a Yale lock on the switch?

A. I do not know whether there is a Yale lock, but then—

Q. Well, a lock on the switch? A. Yes, certainly.

Q. And to station a man there to prevent the Rock Island from running an engine or train onto the Great Western terminal? A. Naturally so, we would.

Q. And the same directions at 20th street?

A. I do not recall that.

Q. You do not recall that?

A. I was leaving the city when this matter occurred.

Q. Well, now you say you read the decree and injunction?

A. Yes, sir.

Q. Does the injunction provide as follows: "Now therefore know ye, The Union Pacific Railroad Company, your officers, agents, attorneys and employees, and each of you, are hereby strictly restrained and enjoined from in any manner interfering with the full, equal and joint use by the Mason

City & Fort Dodge Railroad Company, its successors,
460 lessees and assigns, of a connection with the Union Stock Yards Railroad tracks in South Omaha, and with the tracks of all other railway companies which now are, or which may be hereafter connected at or near South Omaha with the tracks of the Union Pacific Railroad Company hereinbefore described?"

Mr. Rich: That is objected to as incompetent, irrelevant and immaterial; the injunction being a matter of record in this court, and showing for itself; the witness not being able to answer the question unless he has committed the injunction to memory.

A. I only remember in a general way, Mr. Kellogg, that the terms of the decree were the same as the terms of the contract with the other tenants, namely, the Chicago, and Northwestern, Chicago, Rock Island and Pacific, Chicago, Milwaukee & St. Paul railways, and followed the practice that was in vogue with those companies.

Q. Well, will you not look at the decree and see if it also gives the Great Western the right to make a connection with the Union Stock Yards tracks in South Omaha, and with the tracks of all other railroad companies which now are or hereafter may be connected at or near South Omaha with the track of the Union Pacific Railroad Company? Is that correct?

Mr. Rich: That is objected to for the reason that the decree being a matter of record, shows for itself; immaterial and irrelevant.

Q. (referring to paper) Did I read it substantially correct?

A. Well, I should say so. I cannot recall distinctly
461 the variation, if any, between that decree and the contract that we had been operating under for many years.

Q. You do not deny the right of the Great Western to make connections with the Union Stock Yard's tracks, do you?

A. Whatever the decree, whatever the contracts, call for with the tenant lines, and upon which lines I understand your decree was issued, that you were to have the same rights, no more and no less,—that is my interpretation of the Chicago Great Western decree.

Q. That is not in answer to my question. I ask you if it is

not a fact that the Great Western has always made connections with the Union Stock Yards tracks direct?

A. I will have to make the same reply to you that I did before.

Q. You know they have don't you?

A. They make the same connections that the other tenants make.

Q. Very well. They all make connections with the Union Stock Yards direct? A. Same as the others make.

Q. They all make connections with the Union Stock Yard's tracks, don't they?

A. Supposed to do; they have a right to.

Q. They have a right to? If the language is the same in the decree, why haven't they the right to make it with the Rock Island? Do you see any difference? A. Why have they not?

Q. If the language of the decree is in the same terms as to the Rock Island, why haven't they the right to make connections with the Rock Island tracks?

A. The Chicago Great Western?

Q. Yes sir.

462 Mr. Rich: Objected to as incompetent, irrelevant, immaterial and calling for an interpretation of a record of this court.

Q. Well, you personally gave directions then whereby whatever was done to prevent the Great Western or Mason City Company making connections with the Rock Island tracks at Albright, was done, did you not?

A. I think I admitted that several times.

Q. Well, did you?

A. Why certainly, if you desire it repeated.

Q. And the same between the Rock Island Company and the Great Western terminals both at 20th street and the grain terminal?

A. Yes, for the reason that it was establishing a new precedent from the practice that heretofore existed between the tenant companies.

Mr. Kellogg: Well, we will see about that.

Cross Examination,

By Mr. Rich:

Q. Since you have been the General Manager of the Union Pacific, Mr. Mohler, these contracts have been called to your attention, have they, these tenant line contracts?

A. Repeatedly.

Q. And have you within two years, and prior to the time of the refusal to allow the Rock Island to make connections with the Great Western road at 20th street, inquired into and

become conversant with the customs that have been established between tenant lines and the Union Pacific, with reference to handling trains under the contract?

A. In a general way, yes.

463 Q. As a result of that investigation into the custom that prevailed between the Union Pacific and the tenant lines, did you find that any tenant line had ever attempted a direct interchange of cars between itself and any other road connecting with the Union Pacific?

Mr. Kellogg: Objected to as calling for cross examination upon a subject which I did not examine upon, not proper cross examination.

A. There is no case that has come to my knowledge where any company undertook to invade what we supposed were our contract rights, except in this instance.

Q. And during all of these years that these contracts have been in effect, did you understand from your examination, that the Union Pacific should act as the switching intermediary in such an exchange of cars as I indicated in the preceding question?

A. That has been the practice and the custom as I understood it, and that is the reason that I so construed the contract.

Re-direct Examination,

By Mr. Kellogg:

Q. You have only been here two years, isn't that true?

A. About two and a half.

Q. You do not know anything about what was done here before that?

A. Except as the men report to me about it, which they naturally would; as they did in the Rock Island case.

Q. Every line of railroad, every tenant line, the Milwaukee, the Rock Island, the Great Western, and the North-
464 western, have always made connections at South Omaha with the Union Stock Yard's tracks, without the intervention of the Union Pacific switch, and to all industries on the Stock Yard's tracks, have they not?

A. Not with our consent.

Q. Well, they have done it? Haven't they?

A. We discovered they have.

Q. And that has been going on for many years, hasn't it?

A. I couldn't say.

Q. Very well.

A. I am told since last December, largely.

Q. As a matter of fact, has there not been a tariff in force by which all lines have interchanged business through the Union Stock Yard's tracks since 1896?

A. I think some kinds of business have been exchanged there as a matter of convenience. The contract antedates my service with the company, and is not in harmony with the contract as given to me by our General Solicitor.

Q. Well, then, that is one exception isn't it, where it has been done. A. I consider it sharp practice.

Q. It is an exception, isn't it?

A. It might be with them.

Q. Well, now, another exception; all of these lines, that is tenant lines, have delivered and received cars to and from the Union Stock Yards railway without the Union Pacific switch, haven't they?

A. Union Stock Yards?

Q. Yes sir.

465 A. Yes, the contract provides for the exchange of certain business with the Union Stock Yards Company.

Q. Do the contracts with the tenant companies provide any thing about exchange of a certain class of business with the Union Stock Yards Company?

A. It has always been so construed that it did.

Q. Is there a word in the contract about any kind of business being exchanged between the Union Stock Yards and the tenant lines?

A. If they had thought different---(interrupted.)

Q. Will you please answer the question?

A. Mr. Kellogg, my understanding of the enforcement of a contract (I was not here when this was made) is that a certain practice and custom was established which has prevailed here for a great many years. I had naturally, as an operating officer, a right to assume that that was the understood practice by the tenant lines.

Q. Well, I am just getting at the practice. Now, I ask you—

A. Therefore, that not having occurred—

Q. Well, when you get through?

A. (continued) When the contract was made, having not been contemplated by the contract, and having afterwards been modified as I understand it, temporarily, to relieve a congested condition at South Omaha, where we are undertaking to do the business of—(interrupted)

Q. Well, now, that is not what I am asking you at all.

A. Well, go ahead then.

Q. If you want to make a speech, make it after you get through answering my question.

A. Well, it is not contagious.

466 Q. Now, I ask you if all the lines of railroad, tenant lines, those four lines of railroad, have not always re-

ceived cars and delivered cars to the Union Stock Yards Railroad Company, without any intermediate switch of the Union Pacific?

A. I will answer that question with my knowledge so far as it extends.

Q. Have they or have they not?

A. Prior to my connections with the road I know nothing about it; recently I have discovered they did.

Q. Have they not also delivered cars to the Union Stock Yards Company, not only for interchange of business between other lines, but direct business to the Union Stock Yard?

A. I do not know personally that they have.

Q. You know that the Union Pacific don't switch anything between the stock yards and the tenant companies, don't you?

A. If you want me to give you hearsay of others, I can answer the question.

Q. Wait a moment. You know that in making connections with the Union Stock Yards yet there is no Union Pacific switch, don't you?

A. I cannot go into the details of all the practice. They have a right to do certain business there, which I believe they have done.

Q. Certain business? What certain business? What is that business?

A. I think it is probably live stock; I think that is the governing feature.

Q. They have no right to do anything but live stock?

A. I think that was the purpose of the original contract, was to take care of live stock.

467 Q. That is all?

A. Since that time other business has been created.

Q. You say they have no right to do anything but live stock business?

A. It was my understanding that was generally the purpose, or industries that may have been located on their track.

Q. That is not what I asked you. I asked you if it had not been the practice for every railroad company under those contracts to deliver to and from the Union Stock Yards without the Union Pacific switch?

A. Anything going to the Stock Yards and coming out of it.

Q. Yes sir.

A. But nothing to be exchanged between the tenant lines and each other.

Q. That you covered a few moments ago. You said you understood they have been doing it.

A. I do not deny that they delivered stock; I do not deny that they delivered stuff to the industries on the Stock Yards tracks, nor do I deny that they take stock out from industries

on those tracks. I do raise the question on their exchanging other business that is independent of this.

Q. Did you understand the contract made any limitations whatever, in language?

A. It has always been understood so by our people.

Q. It was understood by you—I mean that is not your understanding? The Rock Island Company has always taken trains from its line to the east to its line to the west, without any intervention, hasn't it, of switching by the Union Pacific?

A. I do not know, Mr. Kellogg, of any case where the Rock Island has not complied with the contract, with our knowledge.

Q. That is not the question I asked you. I ask you if the Rock Island are not delivering all its own trains from their connection at Council Bluffs to their connection at Albright? A. You are asking me operating questions now.

Q. You do not know anything about that?

A. I could not swear to it.

Re-cross Examination,

By Mr. Rich:

Q. At the time you gave the orders you have testified to, to Mr. Park, with reference to preventing the direct connection with various tenant lines, did you intend or did you knowingly violate any injunctions, decree or order of this court?

A. Under no circumstances.

Questions by Mr. Kellogg:

Q. I want to ask one more question: About that business interchange at South Omaha: What clause in the contract between the Rock Island Company and the Union Pacific Railroad Company limits the right of the Rock Island Company to make direct deliveries onto the Union Stock Yard's tracks for any kind of business?

A. Why I cannot tell you any more, Mr. Kellogg, than as I have understood the practice, that our people have never understood that that was contemplated, or to be permitted; that the Union Pacific was to be the intermediate switching company, except as previously stated, where the Stock Yards Company had its own industries and live stock.

Q. That is you understood that they had no right to deliver anything but stock and packing house products, or receive anything but stock and packing house products?

A. My understanding is that we gave to the tenants the use of our main tracks and passing tracks, but it was not to be at the expense of removing our switch earnings.

Q. But you know of no provision of the contract that limits it do you? A. Except our practice as I understood it.

Q. You do not know any provision of the contract that limits it?

A. I can only be governed by legal advice, my advice is that it is limited.

Q. But you understand it has been done ever since 1896?

A. I do not know.

Q. You understand that now, don't you?

A. I understand it has been done recently since I have been here. I have no knowledge of what occurred before I came here.

Q. You have heard from your employes it has been done since 1896, haven't you? A. I have not altogether.

Q. Since you have been here, it has been done?

A. To some extent yes; how much, we do not know.

Q. You did not undertake to stop it until the Great Western wanted to deliver to the Rock Island, did you?

A. Did not undertake to stop it until we discovered it.

Q. And until the Rock Island undertook to deliver 470 grain into the grain terminal?

A. Naturally, because we considered that a violation of the contract.

Q. You do not deny the right of the Great Western then, to deliver stock to the Union Stock Yards Company and use the connection of the Union Stock Yards tracks with your main track, do you, do you?

Q. To deliver anything on the tracks of the Union Stock Yards Company under the terms of the contract.

Q. To deliver anything on the tracks of the Union Stock Yards if necessary? A. No sir.

Mr. Kellogg: All right, that is all.

Mr. Rich: That is all.

Witness excused.

471 A. B. Stickney; called as a witness on the part of the plaintiff, being duly sworn, testified as follows:

Direct Examination,

By Mr. Kellogg:

Q. You are President of the Chicago Great Western Railway? A. Yes sir.

Q. How long have you been?

A. Well, I have been since 1884; have not all the time been President.

Q. You have been President and an operating officer of the Great Western System ever since it was constructed, haven't you? A. Yes sir.

Q. And the same with regard to the Mason City and Fort Dodge?

A. I am President now, but I have not been President all that time.

Q. That was constructed under your supervision, wasn't it?

A. A portion of it was.

Q. You have heard the testimony given here by the witnesses in this matter, haven't you?

A. A good deal of it, yes sir; most of it.

Q. Will you please explain the system of handling the interchange business between the various tenant roads at Council Bluffs and the west end? A. May I sit at this map?

Q. Yes, if you will please name places on the map when you refer to it, as much as you can?

A. The principal interchange of business between the various roads that come in from the east, of everything except live stock and some special commodities, is at Council Bluffs. The reason for that is that when the most of these roads were built in there, they had no contract to come across the bridge, and that was the terminus of their road. In practical railroad operation it is necessary to have what is generally called a terminal yard, which consists of a considerable number of side tracks, with round house, water-tank, facilities for washing coaches, ice-house, store-house for train supplies, usually small machine shop for doing light repairs that have to be done from day to day on locomotives; and the custom is that when a road engine brings in a train of cars, they deliver them in this terminal yard, and the road engine goes to to the round house, and the crew both of the engine and the train go off duty, and then that train is taken by a switch engine and broken up and delivered to its various points to which the cars are consigned. Usually there are some local cars to go to the local freight house, some local cars to go to the local team track to be unloaded, and then there are cars to go to connecting lines. The lines coming in here from the east have those yards all over in Council Bluffs, and the most convenient place to deliver to a connecting line, ordinarily, is in Council Bluffs. There is less distance to switches, and it can be done cheaper and easier there than anywhere else; that is the reason why most of the transfer between the railroads that come in here from the east is done over in Council Bluffs, as has been testified here. Then the trains that go out are made up by the switch engines in this terminal yard.

472
473 if there has been freight loaded at the local warehouse, freight house, on the local team track, to go out, these are switched down into this yard; then the deliveries of freight from other roads there to be delivered in different places are got together and switched into the train in this terminal yard; and then when the train is made up, the road engine and road crew take it and go along. So that

all the business between the terminal yard and other roads and local stations, both in Council Bluffs and in Omaha, in these cases is done by the switch engine, except the live stock and packing house products, which is a very large business, and that is done by a switch engine. For instance, take it if we bring in four or five cars of live stock, our road engine stops over at Council Bluffs just the same, and the switch engine takes that over to the Stock Yard, and for that reason a lot of packing house products, or stock, or anything else from the Omaha and South Omaha yards is taken by a switch engine over to our yards at Council Bluffs, and there taken by the road engine, on. So that the Great Western engines that go through, back and forth through this country, through this territory, all local or switch engines, are familiar with the track and do not do anything else but go back and forth, making these different deliveries and collecting freight to be made up into trains to take east.

Now, the Stock Yards is the largest individual industry there is in Omaha; the Stock Yards or the packing house industry, all industries there at the Stock Yards, are by far the largest interests, you might say, I mean in the sense that they are concentrated in a small space there, and have special tracks

474 to accommodate them; and it seems to be conceded, both by the contracts with the Union Pacific and the universal custom, that it is not necessary but that it is economical and necessary—it is not only economical but necessary, that all the trains should run there with their own engines and deliver stock to the Stock Yards and take away the packing house products and other products of those industries with their own engines, without an intermediate switch of any kind.

Q. Now, the next largest industry in this city to-day, is the grain business. Since the grain exchange has been established here, which is only two or three years, this industry has grown enormously. The Secretary of the Grain Exchange is making up for me, a statement of the number of cars received, cars of grain received, here during the year just past, and I was looking it over this morning as far as he got; it seemed to indicate that it would show over thirty thousand cars of grain received in this market during the past year. Now, that is, as I understand it, about one-sixth as many cars as are received at the South Omaha Stock Yards. It is my idea that the grain business is just in its infancy, and it needs and requires special accommodations of a similar character to live stock business—

Mr. Rich: I dislike very much to interfere with you, but I should prefer and have a right to require that your answers be direct answers to interrogatories put to you so that I may ob-

ject. I move to strike out all the latter part of this testimony
as not responsive to the question put; and ask that Mr.
475 Kellogg interrogate the witness.

Mr. Kellogg: We allowed your testimony to go on, and go rambling over everything. I stipulated to you that we would let any part of their testimony be considered objected to; and I certainly want Mr. Stickney to explain this whole situation here without interrogatories, and I am going to ask him to do it. You will be permitted to save an objection and exception to any part of it.

Mr. Rich: He can explain any part of it at length, and I do not want to interrupt him, but I think his explanations should be responsive to the question propounded each time.

Mr. Kellogg: The question is to explain the necessities of a grain market and a grain terminal like the one you have established.

A. I have forgotten where I left off.

(Following part of answer was read) "It is my idea that the grain business is just in its infancy, and it needs and requires special conditions of a similar character to the live stock business."

A. (continued) Believing that, I or the Mason City & Fort Dodge have purchased a considerable tract, some thirty four or thirty five acres, upon the east side of the Union Pacific track, extending from about Martha street to the city limits, upon which we have already built an elevator with a capacity of something over a million bushels, and on which a new elevator is being built that will have a capacity of about a million bushels, and there is still room there for several more.

476 Now I think that the grain business of the grain market here must be freed from all unnecessary expenses in the way of switching. The grain business is done on very small margin, and it cannot afford and will not thrive if burdened with unnecessary switching. A road that does any switching of grain is entitled to a fair consideration for switching, but I do not feel that the business that can be delivered to any of these elevators without any switching, or without any additional expense should be forced through channels that require the intervention of two to three switch engines to get it to the elevator, and burdening that grain with two or three switching charges which are entirely unnecessary.

Now, then, as to the congestion of these tracks west of—south of—20th street, what we are trying to accomplish is not to add to the burden of those tracks but to relieve them of their burden,

to relieve them of the burden which would otherwise go onto them as an increasing burden as the grain business increases. For that reason, while we claim that we had a right under our decree to connect the north end of our grain terminals into the main track near Martha street and the south end of our grain track, the grain terminal tracks, into the main track of the Union Pacific at or about the city limits, in order to take as much of that business off the main tracks as possible, at the suggestion of the manager of the Union Pacific, we consented to pay the interest on about 3500 ft, of track between 20th street and the north end of our grain terminals the rent of which is an additional burden to us; because we had the right to
477 use the main track without paying any additional rent.

We also consented to pay the interest on about 3000 ft of track at the south end to make connections, which is an additional burden of interest to us; and the only reason why I consented to pay that additional burden was, as I understood it, that Mr. Mohler wanted to relieve his main tracks of just as much of that work as possible; and notwithstanding all the testimony that has been given in regard to it, I am very confident very certain, that it will relieve instead of increasing the burdens of the main tracks of the Union Pacific between 20th street and South Omaha.

Mr. Rich: I move to strike out all that part of the answer beginning with the question of congestion, as not responsive and as argumentative.

Q. Will the direct delivery of grain by the Rock Island, the Northwestern, the Missouri Pacific, or any other line connecting with the Union Pacific, at or near South Omaha, into the Great Western terminal burden their tracks as much as to have that grain switched to the Union Pacific at 6th street, as their witnesses testified it should be done?

A. It certainly will not.

Q. Please explain the details of it.

A. The grain coming in off of the Rock Island line from the west would be moved just a mile and a quarter, or just about a mile and a quarter on the Union Pacific line; that would pass off on a grain terminal line if it is delivered direct. That would require an engine, a switch engine, to leave Albright, and come
478 down there with whatever cars it might have, and deliver them there. Then they would get off—they would be entirely off the Union Pacific main track, and the engine returning would go a mile and a quarter on the main tracks of the Union Pacific.

In the way that they desire it to be done, the train would come out at some place at Albright on the Union Pacific yard;

they could not occupy that track the whole distance down to 6th street, which as I scale it is about four miles and a half distant. Then that engine would take it down to 6th street and put it in the 6th street yard. Then the Rock Island engine that brought it down there would have to go back, perhaps four miles and a half to Albright, or go forward light across the bridge to their other side there. Then the Union Pacific engine would have to occupy the main track a greater or less distance according to circumstances going down light, to get there out at the 6th street yard. They would take that up occupying the track, the main track to 20th street; then switch it in onto our 20th street yard. That is the second engine that has had hold of it. Then our engine would take it and switch it. Our engine, by the way, would have to come from somewhere; we would not have an engine there all the time; might have to send an engine special engine, from Council Bluffs over there to take it. And then they would take it up to the grain terminal.

In delivering it direct, the Rock Island would occupy the main track for a mile and a quarter, and there would be no expense to the grain merchant, and delivery to his elevator free of charge.

The other way the Rock Island road would occupy the main track of the Union Pacific four miles and a half; the Union Pacific would occupy the main tracks a mile and a half; that makes five or six miles; and then the Great Western would ship it up on a special track there another mile and a half, making six miles—

Q. Seven and a half?

A. Seven and a half miles of use of the main track of the Union Pacific road, against a mile and a quarter's use of the other way; and making two switching charges of four dollars a car on each car that went in, against no switching charge the other way. The same thing would be duplicated in taking the grain out to market by every train; there would be the same additional use of the Union Pacific track, and the same additional expense for switching.

Q. Did you say two switching charges of four dollars a car, or four dollars a car?

A. Two switching charges of two dollars each—four dollars a car.

A recess was at this time taken until Wednesday, June 20th, 1906, at 9:30 A. M., after which time the following proceedings were had.

Wednesday, June 20, 9:30 A. M.,

Pursuant to adjournment, the further taking of testimony was resumed.

Direct Examination of A B. Stickney resumed by Mr. Kellogg.

Q. Mr. Stickney, have you had a statement prepared which is the analysis of defendants' Exhibits 16 to 22 showing the total movements, switch engines, trains, and all kinds, 480 on different parts of the tracks between 11th street and South Omaha? A. I have.

Q. Will you please state what that shows?

A. The analysis shows that there were movements of trains and engines between 11th street and 16th street, the average daily movements were 406 3-7. On this part of the line there are four main tracks. Between 16th and 20th streets the movements were reduced to an average of 105 a day both ways; 20th street to Summit the average movements per day both ways was 117 4-7; Summit to South Omaha the average movement both ways was 97 4-7.

Continuing the statement I was making last night in regard to the movements of grain from the Rock Island road west to the Great Western grain terminals, from this statement it would appear that if the Rock Island road made deliveries direct to the Great Western tracks at G street in South Omaha they would burden the Union Pacific main tracks for a mile and a half in a territory where there was only 97 4-7 trains per day both ways on the two tracks. If the delivery was made through the Union Pacific in the way they claim it should be made, it would pass from a division having only 97 4-7 trains per day through a division that has 117 4-7 trains, and another division 105 trains per day in to a division that has 406 3-7 trains in order to get in to the yards to make a delivery to the Union Pacific on the 6th street yards; then the Union Pacific would take it out of that yard, haul it over a division having 406 3-7 trains to and deliver it to us at our yards at 481 20th street.

Q. Considering the magnitude of the grain business as it is now or as it will be with proper facilities for handling grain, is that a practical way to handle grain?

A. I don't think it is.

Q. Does it burden the grain with useless expensive switching charges as well as delay?

By Mr. Rich: Objected to as leading.

A. It does.

Q. Will you state something about the amount of grain that is handled in and out of Omaha, you did not know exactly yesterday at the time you were examined?

A. I have a statement here from the records of the Omaha Grain Exchange which shows that during the year beginning with June 1, 1905, and ending with June 1, 1906, the Chicago,

Burlington & Quincy road brought in to Omaha 6496 cars and carried out of Omaha 9032 cars. Chicago Great Western brought in to Omaha 534 cars and carried out of Omaha 3275 cars. The Chicago, Milwaukee & St. Paul brought into Omaha 384 cars and carried out of Omaha 2545 cars. The Chicago & Northwestern brought in to Omaha 7362 cars and carried out of Omaha 1454 cars. The Chicago Rock Island and Pacific brought into Omaha 1137 cars and carried out of Omaha 1539 cars. The Chicago, St. Paul, Minneapolis & Omaha brought into Omaha 3027 cars and carried out of Omaha 43 cars. The Illinois Central brought into Omaha 39 cars and carried out of Omaha 2627 cars. The Missouri Pacific brought into Omaha 135 cars and carried out of Omaha 5073 cars. The Union Pacific brought into Omaha 11194 cars and carried out of Omaha none. The Wabash brought into Omaha 42 cars and carried out of Omaha 5025 cars, making a total brought into Omaha of 30350 cars and carried out of Omaha 30613 cars. The roads coming in from the east brought in a comparatively small quantity as follows: The Chicago Great Western 534 cars; Chicago, Milwaukee & St. Paul 384 cars; the Illinois Central 39 cars; the Wabash 42 cars, making a total of only 999 cars.

Q. So that most of the grain that comes to Omaha comes from the West? A. Yes.

Q. Now, Mr. Stickney, you stated yesterday the manner of the delivery of grain to the Great Western terminal at the west end of the terminals at G street, and how, in your opinion it would relieve the main tracks of the Union Pacific. Please explain how the Chicago & Northwestern, the Missouri Pacific and the Burlington could deliver grain into the Great Western terminals and whether it would relieve the main tracks of the Union Pacific or congest them?

By Mr. Rich: Objected to as immaterial, not being one of the propositions involved in this hearing at all.

A. The track that the Union Pacific is building for connection with the Great Western grain terminals on the south, extends from a point about the city to a point near G street in South Omaha, and is represented on this map by a red line; the Northwestern line connection with the Union Pacific from the west is represented on this map by dotted lines marked "F. E. & M. V. R. R. under construction"; that was the connection at the time this map was made, but that is now constructed and in operation. The red line follows the Northwestern line a little south about 500 feet south from our terminal and a connecting track between our line and that can be put in, and we intend to put it in, by which the Northwestern could deliver their grain directly into the

Independent Elevator, and all other elevators which may be built on our grain terminals, without going out on to the Union Pacific main tracks at all. Now, if the method contended for by the Union Pacific road is pursued, the Northwestern would come out on to their main tracks at their junction near the city limits, haul their grain down over these main tracks into the district where there are more than 400 movements on the main track per day, into the 6th street yard, a distance of approximately $2\frac{1}{2}$ to 3 miles; then the Union Pacific engine would take that back through this district of over 400 movements a day up to 20th Street; then the Chicago Great Western would have to take that to the grain terminals. By delivering it direct it would reach the elevators without any switching charge whatever; delivering it the other way it would reach the elevator by paying two switching charges, one to the Union Pacific and one to the Great Western, which are entirely unnecessary switchings, and would cost approximately \$4.00 per car, burden the grain with \$4.00 per car switching charges. The Burlington road crosses over the Union Pacific, a short distance, a few hundred feet, or perhaps less, from the junction of the Northwestern and Union Pacific, and crosses over the red line which indicates the track that is being constructed for the use of the grain terminals. We are now engaged in con-

484 structing a track from this red track to a connection with the Burlington road of about 1000 or 1500 feet in length which will enable the Burlington road to deliver their grain to the grain terminals without going out on to the main track of the Union Pacific at all, and they would deliver it in to the grain terminals free of charge. As it is now, it must be carried over the Burlington tracks down into their yard opposite 6th street, switch from there into the Union Pacific track and the Union Pacific would then take it through this section of 400 train movements per day up to 20th street and the Great Western would take it from there up to the elevator, making two switching charges on that grain, which are unnecessary, and would burden the Burlington grain in getting into these elevators, with a switching charge of \$4.00 per car. The Missouri Pacific has a connection with this red line representing the track that is being built by us, on which they could deliver grain to the elevator without going on to the Union Pacific tracks at all, and without burdening the grain with any switching charges. As it is now, the Missouri Pacific would have to deliver it to the Union Pacific and then the Union Pacific would switch it down to 20th street or to G street, and the Great Western would have to switch it either from the 20th street to the elevators, or from G street to the elevators, burdening their grain with switching charges of \$4.00, which otherwise would have no burden whatever upon it.

Q. Now, Mr. Stickney, taking what grain comes from the east, if the tenant lines connecting with the Union Pacific at Council Bluffs, and which lines use the tracks of the 485 Union Pacific from Council Bluffs to South Omaha, were allowed to deliver grain direct in to the Great Western terminals, would it add to the congestion on the Union Pacific tracks, or would it lessen the congestion?

A. I think it would lessen the congestion, especially when the Union Pacific carries out their contract which is in evidence and marked Exhibit "8"; as the tracks are now constructed, a tenant line coming with grain from the east would have to come on the main tracks of the Union Pacific up to their 20th street yard and then back it into the Union Pacific yards, then the Union Pacific would switch it out of their yards and put it on 20th street yards, an entirely unnecessary switching, and then the Great Western would have to take it up, which entails two unnecessary switching charges. The contract that is in evidence shows that the Union Pacific agreed to construct that connection with the main track of the Union Pacific in such a way that a train coming from the east could run right on to it head first without any reverse movement whatever. The contract has not been carried out in that respect, but I assume that they intend to do it, and if after reasonable time they fail to do it, we shall insist upon their doing it. When this contract is carried out, a train coming from the east with grain could head right in there and take their load right up to the terminals without burdening it with any switching charge as against the method insisted upon by the Union Pacific of first setting it in to the 20th street yards and then they switch it out and put it in to our 20th street yard, charging \$2.00 for that, and then the Great

486 Western would have to charge \$2.00 for taking it up which would burden that grain with \$4.00 per car, which is entirely unnecessary. I will say that at the time this contract Exhibit 8 was made, we requested permission or demanded our right to connect with the main track of the Union Pacific road at or near Martha street, the south end of our grain terminals. Mr. Mohler objected to that and wished us to make this contract to connect down at 20th street, because he said he wanted us to get off of his main track just as soon as possible so as to relieve his main tracks of that much burden. That was the incentive, and as a matter of good fellowship I consented to do that and paid interest on that track for the purpose of relieving the burden on the Union Pacific main tracks.

Q. The tracks you say are not yet connected up so trains can head in coming from the east direct on to these grain terminals? A. No, not at present.

Q. You heard the testimony of the witnesses of the Union Pacific road, that at present the grain would be handled by bringing it from the east by the several tenant lines running upon the main track at the west end of 20th street and backing in to the Union Pacific 20th street yards, thereby using the main track for two movements, did you not? A. Yes.

Q. Will it burden the Union Pacific main tracks any more for it to back it directly into the Great Western 20th street yards than to back it into the Union Pacific 20th street yards?

A. If they would bring in any train to deliver to the Great Western it would back in there on to the Great Western
487 road, they would be required to throw one switch more than they would to get in on to the Union Pacific 20th street yard, which might consume from one-half minute to a minute more time than it would to put it in the Union Pacific 20th street yard; but it would consume much less time to make it with one movement than it would to make the two movements the other way, because after it is backed into the Union Pacific 20th street yard, it would then have to take another movement and come out and then open and throw this extra switch, so it would take two movements instead of one, and it would consume more time to deliver it first to the Union Pacific 20th street yard and then for them to deliver it to the Great Western.

Q. Is there anything in the difference of the distance in switching into the Union Pacific 20th street yards or switching direct to the Great Western 20th street yards that would make any difference in the burdening of their tracks?

A. There is absolutely no difference in distance. From this map which is drawn to scale and accurate, it is easy to see that there is absolutely no difference, or practically no difference. It might be a few feet more or less on either one, I should not know which was the most.

Q. Then for eastern lines to deliver into the Union Pacific 20th street yards, as they insist it shall be done, I understand you, they would use the same leads, the same switches and the same tracks, exactly the same as they would to pull it in to the Great Western 20th street yards?

A. Yes, only there would be one more switch to throw to put it into the Great Western.

488 Q. And for the Union Pacific to switch it out makes an entirely separate and additional movement?

A. Yes, causes delay and additional use of tracks.

Q. About what time were the elevators completed and the grain terminal opened for business?

A. I am unable to state.

Q. You have heard the testimony of the witnesses and seen the statements showing the total number of trains from Council Bluffs across the bridge to the Union Pacific depot and freight

depot at 6th street, the total number of trains from 11th street to 16th street, 16th street to 20th street, 20th street to the Summit, and Summit to South Omaha, have you not?

A. Yes.

Q. State whether in your opinion the main and passing tracks of the Union Pacific over that entire distance are burdened or have any where near reached their full capacity?

A. I do not think they have anywhere near reached their full capacity.

Q. Please explain that?

A. The movements across the bridge as I recollect the testimony is a little conflicting; somewhere from 190 movements including trains and light engines up to 235, I think, is the largest number. The bridge is a double track bridge and it is entirely safe to run trains as the general superintendent of the Union Pacific road testified at one minute headway, that is, one minute between the trains. If they were run at one minute headway and there were 235 trains both ways, that would be 117 trains each way if they were run at one minute headway it would take 117 minutes for those trains to pass any given point, or in other words they would occupy the bridge 117 minutes which is only one hour and 57 minutes or two hours out of the twenty-four. If they were run at two minutes headway, that would consume 234 minutes or a little less than four hours out of the twenty-four hours of the day.

Q. You would add to that, would you, the time it takes them to run from Council Bluffs to the bridge?

A. I don't think mathematically, we should add that. Now, the Union Depot Company at St. Paul has 280 odd regular scheduled passenger trains in and out of it each twenty-four hours. Many of those trains are backed in, which requires two movements to each train, I can't tell how many; in addition to that there is a large amount of freight moved through the Union Depot Company's tracks, I have not the statistics to show how many trains are moved through there, but I know that the Chicago Great Western road has moved through there as high as a thousand car-loads a day in trains of about twenty-five cars each, would make forty trains, forty loaded trains and returning the empties would make forty trains more; that would make three hundred and sixty trains. Then the Omaha road transfers a large amount of freight through there; it is the only connecting link between their eastern and western divisions, all their regular freight trains that come out of their western divisions have to pass through there to get to their eastern divisions. All the stuff that is transferred between the Omaha road and the Great Northern and the Northern

Pacific, the Omaha Western Division and the Great Northern and the Northern Pacific and the Soo road all passes through those yards, making probably considerably more than four hundred trains a day. The Erie Road in New York passes through a double track tunnel just out of New York an average of four hundred regular trains a day, besides all their light engines and switch movements which are not counted. The Delaware and Lackawanna passes through their double track tunnel through the divide just out of Jersey City something like 360 or 370 regular trains a day besides all their light engines and switch engines.

Q. Don't that include the light engines and switch movements in each case?

A. Well, say they do, I understand the other way, but say they do. The Great Western has at St. Paul a single track bridge across the Mississippi over which all the stock that goes to the South St. Paul Stockyards and all the packing house products that comes out passes over besides our regular passenger trains; we have had periods there when we passed over that single track bridge over eighty trains a day and we did not consider it burdened at all. A single track bridge is no where near the capacity of a double track bridge.

Now, as to these movements westward the district of greatest congestion according to the testimony contained in Exhibits 16 to 22 is between 11th street and 16th street. There are four main tracks in that district instead of two, two for passenger trains and two for freight trains; I was down there last night and watched the maneuvers that were going on for perhaps half an hour and during that time the Union Pacific were drilling their 6th street yard at the west end. The engines going over making short switches back and forth there, and those if counted in making up the grand total of four hundred movements per day on the main track, which would be an average of about one hundred to each track, and is by no means the capacity of four tracks. As to the trains west of 16th street up to 20th street, 105 trains a day on two tracks is by no means a congested condition; and between 20th street and Summit 117 trains each day is by no means a congested condition; and from Summit to South Omaha only 97 trains is by no means a congested condition of tracks.

Q. Well, Mr. Stickney, is it half the natural capacity of a double track terminal like that? A. I don't think it is.

Q. Can you run more than twice as many trains over a double track as you can over a single track? A. Oh, yes.

Q. And the ratio of increase of trains is not according to the number of tracks? A. Oh, no.

Q. Mr. Stickney, I believe there was offered in evidence a letter written by you to Mr. Mohler, April 23, 1906; will you

look at Exhibit No. 10, have you any explanation why you wrote that letter to Mr. Mohler?

A. At the time of the application to make connections with the main track of the Union Pacific and our grain terminals tracks was before the court, I asked the Union Pacific to stipulate that other tenant lines and other lines which they might permit to occupy them should have the right to occupy them and they objected very strenuously to that, but finally
492 consented to a decree being made to the effect that all the tenant lines of the Union Pacific road should have the same rights over these connecting tracks that they would have if the connections were made direct with the main track in the way that we desired to have them made; while I had no doubt in my own mind about the right of the tenant lines to run into our terminals—

By Mr. Rich: Move to strike out the statement as to his beliefs and doubts as to the contracts as immaterial.

—while I had no doubt in my own mind about the legal right of these tenant lines to come in on to our terminals with our consent if the connection was made direct, still the serious objection that the Union Pacific made to that proposition indicated to my mind that they were going to contest that point and as I wanted to have that matter cleared up, I wrote this letter to Mr. Mohler as giving him notice that I was going to move in the matter.

Cross Examination,

By Mr. Rich:

Q. Mr. Stickney, at the time the supplemental decree was entered in this case, that you have just mentioned, you suggested to Mr. Mohler, did you not, that it be inserted in that decree that the other tenant roads have a right to the direct connection and interchange of cars and that that be included in the supplemental decree?

A. No, the contract as made, which is in evidence here, limited the use of that track to the Great Western 'proper'
493 and when Mr. Mohler suggested that we make that long connection out there, I offered to consent to it on the condition that tenant lines should have the same rights to come over that track and the track that was embraced in this contract Exhibit 10, as they would have if the connection was made direct by ourselves, and after negotiation it was finally agreed that the tenant companies should have the same right on both of these lines, the line built under the contract, Exhibit 10, and the line proposed to be built southward that they would have over if the connections were made direct by ourselves.

Q. Well, that was not your proposition primarily, was it?

A. [Out] proposition primarily was to make the connection.

Q. No, but with reference to the tenant lines running on that track?

A. We made no proposition, we were well satisfied of our rights.

Q. Didn't you just state that you did make a proposition that Mr. Mohler strenuously objected to, you just stated that, did you not? A. No.

Q. What did you mean that the Union Pacific strenuously objected to and fought, what proposition was it?

A. They objected to our making direct connections with our own line at the nearest point.

Q. That is what you meant then, that you said they strenuously fought and objected to a proposition you made, is it?

A. That is what I meant and that is what I said.

Q. Then you didn't mean that you made a proposition that all the tenant lines should have the right to run over this new track and that the Union Pacific objected to that and said they had no such right and that the Company would not consent to it?

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A. I didn't say that, Mr. Rich.

Q. Well, that is a fact, however, isn't it?

A. No sir, it is not the fact. We simply made an application to connect our grain terminal tracks with the Union Pacific Road main tracks just north of the city lines or about at the city limits on the south and near Martha Street on the north, the Union Pacific objected to that.

Q. And said they would build you a track in lieu of that connection 1500 or 1700 feet that would connect down near G street some place?

A. Yes.

Q. And when that proposition was being discussed, didn't you then say in this room, sitting at the other table, that it was your intention to make this grain terminals free and you would like to have the Union Pacific consent that there should be put in the supplemental decree a statement to the effect that the tenant lines should have the right to run over that track that 1700 ft. track provided for by the supplemental decree? A. I presume I did.

Q. And Mr. Mohler at that time said to you that the tenant lines had no such right or rights under the contracts and that the Union Pacific would not consent to it?

A. I don't remember that he said that.

Q. And after he said that, wasn't it then agreed upon between yourself and Mr. Mohler and the attorneys in the case that you should put in a clause that the tenant lines should have the same right to a connection with the new 1700 ft. track that they would have had under their

495

contracts had the connection been made to Summit as you originally filed an application for?

A. I said that I would consent to that long connection on condition that the tenant lines should have a right to use that, not only that track but the other track provided for in the contract Exhibit 10, and I don't think Mr. Mohler had much to say about it but Mr. Baldwin said that he had no authority to consent to give the tenant companies any rights which they did not already possess and he did not know whether they would have that right or not, but I think it was on your suggestion that the final compromise was made that the decree should state that the tenant lines should have the same rights on these connected tracks that they would have if we made a direct connection, no more and no less.

Q. Isn't it a fact, Mr. Stickney, that the 1700 ft. track was agreed upon before dinner and that adjournment was taken to allow Judge McHugh and Mr. Kellogg time to prepare the supplemental decree and that the question of the rights of the tenant lines to use that 1700 ft. track arose after that first draft of that decree and hours after the agreement had been entered into with reference to the 700 ft. track?

A. No sir, we never agreed to the 1700 ft. track until we agreed to the language that is in the decree, the language in the decree shows for itself.

Q. Isn't it a fact that a draft of that decree was brought in by Judge McHugh and Mr. Kellogg after lunch time the
496 agreement having been made with reference to the 1700 ft. track before lunch time, and that in the afternoon that discussion arose as to the rights of the tenant lines to use that 1700 ft. track, and it was finally agreed that the clause should be put in as it now stands in the decree?

A. I don't know whether it was before lunch or after lunch or how it was, but I know we finally compromised the language in that decree, Mr. Baldwin saying that he did not know what rights they had; if they had those rights he was willing they should exercise them; if they hadn't that right he had no authority as attorney to give the tenant companies any additional rights.

Q. You don't mean to say that you consented to the 1700 ft. track only upon condition that the tenants should have the same rights with reference to that track as they would have had, had the connection been made at the top of the hill?

A. Absolutely, and no other.

Q. And you stated that in the forenoon, did you?

A. I don't know whether it was forenoon or afternoon, but under no other conditions would I consent to it.

Q. Well, when you wrote this letter of April 6th, being Exhibit 10, to Mr. Mohler, you knew that he would deny the

right of the tenant lines to enter upon that road or that piece of track, didn't you?

A. No, I didn't know it, I suspected he would.

Q. He had denied it the last time you had any conversation with him? A. No.

497 Q. Had you had a conversation with him after the meeting in this court room when the supplemental decree was agreed to?

A. I don't remember whether I did or not.

Q. Well, he did deny the right at that time, didn't he?

A. I don't know whether he did or not.

Q. You don't remember that?

A. No, I think he asked if I construed the decree that we had a right to switch on to their main tracks, I told him that the decree gave us the full joint and equal right on the main track and that that meant that we had a right to do on the main track anything that the Union Pacific had a right to do on it. Mr. Mohler shrugged his shoulders and laughed as near as I can remember.

Q. Well, if you did not know his position on the day the supplemental decree was entered why was that other clause put in the supplemental decree, have you made as full and complete a statement concerning that as you desire to?

A. Yes sir.

Q. And you have made as full and complete statement in reference to your letter of April 6th and your reasons for writing it as you desire to, have you?

A. That was the reason for writing it.

Q. And when you wrote it you knew that Mr. Mohler would deny the right? A. No, I suspected he would.

Q. Mr. Stickney, where do you find in the contract that the track to be built from a connection near 20th street to your grain terminals for your use should be so constructed and connected with the eastbound main line, that you could
498 come from the east on the eastbound main line and head directly in on to the terminal track provided for?

A. Just look here, I will show you (refers to map and contract) The contract says it shall be built in accordance with this map, the yellow line on the map. Now here is a line out there to the Union Pacific main track there, this line comes down here, that is what I base it on.

Q. Then you base it upon an inspection of the map and not from any words contained in the contract except as referring to the map?

A. The contract says, if I remember it right, that it shall be located and built according to the plan attached and the plan attached shows that.

Q. And the plan attached according to your construction

of it shows such a connection with the eastbound main line that a train coming from the east on that line could head right in on to that grain terminal?

A. Yes, and when we were making the contract it was discussed and Mr. Mohler says, "I want you to get off our main tracks as soon as possible, fix it this way and run right up there."

Q. Mr. Mohler took part in that conversation, did he, that led up to this contract?

A. He was the man that we made the contract with.

Q. Well, is he the man that you agreed upon the details of the contract with? A. Yes, it is my understanding.

499 Q. And at the time that the contract was made and before it was executed, before it was put in written form, it was agreed, was it, that that track to the grain terminals for a connection near 20th street should be so constructed that you could head in on to that track from the eastbound main line? A. Yes.

Q. That track has not been constructed that way yet, has it? A. No sir.

Q. You have never any complaint about it, have you, up to this time?

A. I don't think the track has been constructed at all that the contract called for, we have been permitted to use a track temporarily.

Q. Well, the eastern end of the track has been constructed, hasn't it? A. I don't think it has.

Q. Have you ever made any complaint that that track has never been constructed or that connection made in the manner provided for according to your interpretation of the contract?

A. I don't know as I have ever made any complaint, I have spoken about it occasionally.

Q. Mr. Stickney, in testifying with reference to the movement of trains between 11th and 16th streets you said there were four tracks on which to run those trains, that that would make an average of 100 trains to the track and that the condition would not be a congested one. Did you base that statement upon the statement of the witness who prepared the table for showing the movements, to the effect that all those 400 trains at some time stood upon the main tracks or by their movements turned the signal so that the main tracks were blocked.

500 A. That 400 movements a day includes passenger trains as well as freight trains, now at that point between 11th and 16th there are two main tracks for the passenger trains, and there are two main tracks for freight trains; I know that because I have seen them and the map shows it.

Q. Well, that don't answer the question. You heard the witness that prepared this statement testify, did you not, that these 400 movements, each one and every one of them at some point passed upon one of the two main passenger tracks and blocked them?

A. I did not hear him say that.

Q. You did not hear him say that? Then your statement that you make with reference to that not being a congested condition is based upon the assumption that those 400 movements are distributed equally between the four tracks and that not all of the 400 movements and each of them block the main track for a particular time.

A. I don't think they are distributed equally on the four tracks, the passenger trains are on the passenger tracks and the freight trains are on the freight tracks. How much the larger portion of those movements are freight movements drilling on that 6th street yard at the west end.

Q. Then in making the statement that that condition is not a congested one, you base it upon the fact that a part of those movements do not touch the main line passenger tracks and do not block them?

A. Well, I think that two tracks would take care of 400 movements a day of that kind without any difficulty,
501 but as a matter of fact a portion of those freight movements do not touch the main tracks when they get down to only two main tracks.

Q. Didn't Mr. Clancy testify that the 400 movements shown by his statement did each and every one of them at some time block the main line?

A. Yes, but he did not distinguish between the freight and passenger main lines.

Q. Didn't he testify that it blocked the passenger, the east and westbound passenger main lines?

A. No sir, I don't think he did.

Q. Well, you don't know that the movements didn't do that at the time they were made when this statement was prepared, do you?

A. I do, yes, from the layout of the yards there and from the way they drilled these trains last night I know that they didn't.

Q. And you base that knowledge upon what you saw down there last night?

A. And the layout of the yards and from my general knowledge of how that kind of business is done. I don't think that Mr. Clancy will claim that all those movements come out on to the two main tracks that the passenger trains run over.

Q. You testified with reference to movements through the depot yards at St. Paul?

A. Yes.

Q. Do they stop in those yards to switch?

A. Well, there is some switching done in those yards, not a great deal. There is about half of the tracks are dead-end tracks, on those tracks the Great Northern and Northern Pacific run their trains; on those tracks their trains after they are brought in are switched out and switched over on to some other standing tracks which would increase the number of movements very materially over what I stated.

Q. And you know, don't you, that the congestion in those depot yards now has reached such an extent that every line using them except the Great Western is devising ways and means to increase the size or to increase the efficiency or to take some measure to relieve the congestion that exists there at the present time?

A. I know absolutely that that is not true.

Q. You do?

A. I do. There is some complaint about the depot building itself being too small.

Q. And do you deny that there is not a complaint about there being insufficient tracks and facilities for handling the trains there at the present time and that all of the roads using those tracks agree that that condition exists with the exception of the Great Western, do you know that that is true?

A. I know that it is not true.

Q. Well, the matter has been discussed hasn't it?

A. We increased the size of them two or three years ago.

Q. And the Great Western is now insisting, isn't it, that there is sufficient room there?

A. I don't know, it isn't a matter of discussion at all.

Q. When was it last a matter of discussion?

503 A. Well, before we increased the size of them, we went to work and built a lot of land out in the river to give to the Milwaukee road so that they would give the Union Depot Co., some more land and we increased the size and put down more tracks and widened out the leads over them, since then it has not been a matter of discussion at all.

Q. Are you wholly satisfied with your analysis of the movements of trains over the tracks over the bridge, and are you wholly satisfied with your statement as a fair statement representing the exact tracks in the case from an operating standpoint, that the 117 trains could be run over there in 117 minutes?

A. I said they could pass a given point in 117 minutes.

Q. Certainly, but you don't mean that they could handle 117 trains each way over that bridge under ordinary conditions in a 117 minutes, do you?

A. They could pass a given, any given point.

Q. Certainly, if you had them strung out already to start, one after another, a minute apart, nothing to interfere, no business to stop them, no switching at the west end of the bridge, nothing to oppose them, in their passage, that 117 trains started in that manner could pass a given point in 117 minutes?

A. Yes.

Q. And that is all you mean, isn't it?

A. That is all I mean.

Q. You don't mean to convey to the Court who will read this testimony, the impression, that the 117 trains that pass each way over that bridge can be handled each day in a 117 minutes under existing conditions?

504 A. There is a great many roads, you will take the time cards of the New York Central and New Haven, and the Pennsylvania and the Erie, and those roads that have that enormous business in and out of New York and you will find their trains scheduled two minutes apart.

Q. Certainly, now answer my question; you don't mean that Judge Munger, when he comes to read this testimony shall quote Mr. Stickney as saying that the 117 trains that run over this bridge under the conditions existing at the present time, could be and ought to be run over in 117 minutes, do you?

A. I think, as a matter of fact, no, that the actual time of those trains passing a given point, does not exceed that; I do not mean to say that they do follow—but add together the time that they are passing a given point, it won't exceed that.

Q. Well, I guess nobody will dispute you. You have examined the time tables, have you, with reference to that district?

A. Yes.

Q. Does that provide that they shall pass in 117 minutes?

A. Practically.

Q. That provides that if you stood at the east end of the bridge with that time table in your hand, and stood there 24 hours that adding up altogether the number of engines that passed you or the number of engines and trains that passed you in 24 hours, adding up the actual time that it took each one to pass you, it would equal 117 minutes?

A. Practically, yes.

Q. But owing to force of circumstances, that is distributed over 24 hours, isn't it?

505 A. Quite a number of hours, probably 24.

Q. And you don't want the court to understand that you, as a fair witness in discussing this question of congestion, you don't want the court to understand that you testify that under existing conditions those trains could be moved across there in 117 minutes, do you?

A. I didn't say they could be moved across.

Q. Or could be moved past a given point in 117 minutes, do you, consecutively?

A. I didn't say consecutive, but if they are not consecutive it leaves space between for other trains.

Q. Then you were just making a mathematical statement that if it only took a train a minute to pass you and 117 went by in 24 hours, that the total time it took 117 to pass would be 117 minutes or thereabouts?

A. Yes, leaving abundance of time unoccupied when the tracks are not occupied for other trains to pass.

Q. Then you understand that they are strung out over a period of 24 hours in each direction? A. Oh, yes.

Q. If a train is scheduled to move over the track at a given time and does not move at that time, then that disorganizes the movement if any other train follows immediately afterward, doesn't it?

A. How is that?

Q. If trains fail to move at the appointed time that disorganizes the movement of other trains, does it not?

A. Oh, it may, and it may not. If for instance, the
506 Great Western train fails to arrive at the junction at the appointed time, that would not prevent the Northwestern, if they were ready to go, to pass through.

Q. If they were there ready, it would not?

A. If they were there ready it would not disorganize the other time cards at all.

Q. You said, using an illustration, that the Erie road passed through a tunnel 400 trains a day, double track?

A. Double track.

Q. Now in that case they run through, entirely through from one end to the other without stopping?

A. The same as you do on your bridge.

Q. No switching; what is the length of that tunnel?

A. My recollection is it is about three-fourths of a mile; they run through the same as these trains run over your bridge.

Q. And your illustration with reference to the Delaware and Lackawanna is the same? A. Yes sir.

Q. In the case of the Erie or Delaware or Lackawanna illustration do any other roads run over that or the cars of any tenant lines?

A. Well, they used to, there has been so many consolidations lately, I don't know whether the Erie has bought up—there was a road called something and Susquehanna, I don't know what, they used to run over it, I don't know who owns it now. I don't know I am willing to admit that they are all Erie trains.

Q. You entered into an explanation of why it would congest

the Union Pacific tracks so much for the Rock Island to
507 make direct deliveries as to be made by the Union Pacific,
and in making your statement you said the Rock Island
would come up to G street with a switch engine and a few cars
and make the cross over, does the Rock Island now deliver cars
any place along the Union Pacific line in the bridge district with
a switch engine?

A. The General Manager and Switch Yard Master of the
Rock Island are here, they can answer that better than I.

Q. Then when you made that statement you did not know
whether they would deliver it with a switch engine or a road
engine with the balance of the freight train attached, did you?

A. Well, I assume that they run a railroad the same as other
people do, and they will, in doing their business, pursue well
established and well recognized customs of railroading.

Q. Well, now in examining the various witnesses that have
appeared in this case, they have all been examined with refer-
ence to existing conditions, haven't they?

A. Well, I have been at a loss to know with what reference
they have been examined, most of the testimony has been Greek
to me, it didn't seem to refer to anything.

Q. Then why do you offer any testimony in answer to it?
Now, Mr. Stickney, do you know whether or not, the Rock
Island in delivering cars to the Union Pacific, brings them
through in a freight train and sets out what cars it has at 6th
street and then goes on east with the balance of its freight
train?

A. I know that your witnesses testified that they did that
sometimes.

508 Q. And all of our witnesses testified that they did not
know of the Rock Island having any yards or using any
switch engines, didn't they, all who testified on that point?

A. Well, I remember that one at least, and perhaps two,
testified that the usual custom of the Rock Island, was to, if
they had a car in their train, to bring it in their train, down
there and set it out, which seems to me to be reasonable where
they simply have one car in a train to—

Q. Hauling their cars with a road engine—

A. —Where their train is going through to Council Bluffs,
but I doubt whether they handle their stock to the Stock Yards
that way.

Q. Then in testifying on that point, Mr. Stickney, you were
assuming the most liberal conditions that you could think of,
weren't you, that they should break up their train down in
some imaginary yards and haul the cars destined for the grain
terminals with that imaginary switch engine, up to this G
street connection and pass over that point; you don't mean
to tell the court that they haul their cars now, or make deliv-

eries any place between Omaha and South Omaha with a switch engine hauling cars that have been broken up in a yard that they have west of South Omaha?

A. I assumed that they would follow recognized customs in doing business, the most economical way.

Q. And when you testified to that you knew that all of the witnesses who knew anything about it, had testified that they did not conduct their business at the present time in that respect according to the recognized customs which you speak of.

509 A. I think all the witnesses agreed that when they had any considerable amount of stock to go to the Stock Yards they put it down there with a switch engine.

Q. Did you hear one single witness testify to any such thing as that?

A. Well, I am not certain about it, but that is my recollection.

Q. Now suppose that the Rock Island does not have a switch engine, and suppose it should attempt to make a delivery to the proposed 1700 ft. track at G street and in making that it should pull up to that point with a freight train with several cars on the head end of that train, or in that freight train anywhere for your terminal, that it had passed from the westbound main line across the eastbound main line on to this connection of the 1700 ft. track, that would leave the balance of their train during that time of necessity would it not, standing on the eastbound main line?

A. Not of necessity, they could take their whole train right along and when they got down to the elevator set out the cars for the elevator—

Q. Or they could pull their freight trains right on up to your terminals, then when they did that if they made their exit from your terminals from the east end, they would cross the eastbound main line in doing that again and getting on to the westbound main line? A. Yes.

Q. Or if they backed out of your terminals with their freight train, they would cross the westbound main line and back on to the eastbound main line? A. Yes.

510 Q. And all of these movements with reference to the two main tracks east and westbound would necessitate the stopping and the opening and shutting of switches wouldn't it, at these points;

A. Yes, it would do that, and so it would if the Union Pacific did it, there is no way of getting grain off of the westbound track in a yard on the east side without crossing the eastbound track, you can't do it by the Union Pacific, no matter how smart their employees are, they can't do it, it is a physical impossibility, whether it is handled by the Rock Island or the Union Pacific, it is the same thing.

Q. When you testified with reference to the handling of a Rock Island car of grain from 6th street to your terminals, you stated, didn't you, in your answer, that the Union Pacific would take it and haul it over its eastbound main line down to 20th street? A. How is that?

Q. You stated in your answer to a question from Mr. Kellogg with reference to a movement of a car bringing Rock Island grain from 6th street to the 20th street terminal, that the Union Pacific would haul it from 6th street to 20th street on the westbound main line?

A. I didn't say anything about what line, but that is the way they would do it, I suppose.

Q. Now didn't you hear all the witnesses that testified in this case, testify that they wouldn't do any such thing, and that in hauling it from 6th to 20th street they would only use the westbound main line at one point for 115 feet?

A. No, they said they could do that, that it was possible for that to be done.

511 Q. Didn't they testify that in a movement of cars of that character that they do use inside tracks and only use the westbound main line for a space of 115 feet?

A. I understood them to say that they could do it, but I did not understand them to say that they did do it, and I don't think as a matter of fact, I don't think that they run down that grade and up again when there is a clear main track for them to run on a level.

Q. You have examined the contract between the Union Pacific and Rock Island road haven't you at various times?

A. Yes.

Q. Is there anything in that contract that provides the manner in which the Rock Island shall handle cars over the main or passing tracks? A. I don't think so.

Q. There is nothing in the contract that would require them to break up a freight train in their yards and then handle cars over the Union Pacific tracks with a switch engine, is there?

A. I don't think there is.

Q. In your statement of how grain could be delivered by the Chicago & Northwestern coming from the west, you didn't make any estimate as to how the delivery would be made under existing conditions at all, did you?

A. I thought I did, if I didn't I omitted it by mistake.

Q. In your statement as to how that grain would be handled, didn't you state that the way to handle it was to build a connection from the new 1700 ft. track to their tracks at the Summit near where they connect with the Union Pacific and then run off of the Great Western over that connection on
512 to the 1700 ft. track and not touch the Union Pacific main line.

A. That is the way I should endeavor to have it done.

Q. Is there any such connection built at the present time?

A. No, sir, the 1700 ft. track isn't built.

Q. Then you couldn't handle a car in that manner at the present time, could you?

A. No, we can't use the 1700 ft. track until it is completed. The contract time for its being completed has expired, and it isn't completed, that is not our fault it is the Union Pacific's fault.

Q. But there is no contract with the Union Pacific is there for building a connecting line with the F. E. & M. V., and the 1700 ft. track?

A. No sir, but the law of the country not only provides that we may but we must, that it is the duty of the railroads to provide connections.

Q. If it is demanded?

A. Whether it is demanded or not, it is the duty of railroads to make connections between each other.

Q. Then in handling a car at the present time that came from the west over the Northwestern destined for the Independent Elevators it would not be handled in the manner you detailed at all, would it?

A. No, I simply detailed the way you demanded it to be done and the way that we expected to do it when we got our arrangements completed. As a matter of fact now it is delivered to the Union Stock Yards Company and the Union Stock Yards Company delivers it to the Great Western Company and the Great Western Company switches it
513 around to the elevator incurring a switching charge of \$3.00 that way.

Q. In the case of the Missouri Pacific in detailing the manner of delivery by the Missouri Pacific to the Great Western on the 1700 ft. track at the connection with the old Belt Line track near G. Street, it is not possible to make a delivery in that manner now, is it?

A. Certainly not until the Union Pacific completes their contract.

Q. So that a car from the Missouri Pacific to be delivered to the Great Western at the present time would not be delivered in that manner?

A. No, that would be delivered through the Stock Yards in the same way.

Q. Then your testimony with reference to delivery from all these other tenant lines to the Union Pacific of grain from the west was not with reference to existing conditions, but was with reference to conditions that you thought might exist sometime in the future?

A. As far as I detailed those in reference to your demand, they are according to existing conditions.

Q. What width of right of way, Mr. Stickney, do you usually acquire in connection with your roads or lines?

A. Well, going through a prairie country where it is pretty level we get 100 ft. in the country, if the surface of the ground is such that it requires high embankments or deep cuts, why, we buy enough more land to cover that contingency and in towns and cities we buy lands with reference to the amount of business there is there.

514 Q. What is the width of your yards at 16th and Leavenworth or near there, abutting on the 16th street viaduct? A. I think we have seven tracks.

Q. Well, including your tracks and station house and unoccupied ground, how wide are your yards at that point?

A. Well, 400 or 500 ft.

Q. And in those yards you handle only freight hauled by the Great Western for delivery in Omaha, local delivery?

A. Well, we have got in those yards a large coal yard, it occupies considerable ground, then we have got considerable ground that is still unoccupied.

Q. At South Omaha where all of these exchanges between the tenant lines and the Stock Yards and the Union Pacific just in front of the station, are made, do you know the width of the yards at that point and the number of tracks?

A. I do not.

Q. You have been there frequently?

A. No, I have not been there frequently.

Q. The yards do not exceed 100 ft. in width at that point, do they?

A. I don't know, I understand that you have have got a good deal more ground there, that you intend to widen them out.

Q. Between the stock yards and the passenger station in South Omaha?

A. That is my understanding that you have got a street vacated there to get more room at the passenger station.

Q. In your country stations, Mr. Stickney, what is the ordinary width of your right of way you have?

A. Oh, we generally take, if I recollect right, about 300 ft., land is cheap.

515 Q. Now, Mr. Stickney, you say, that if this movement of cars continues as the Union Pacific insists it should continue, that that burdens the grain going into Independent Elevators with a \$4.00 switching charge, which is useless, that is your statement is it?

A. That is my statement.

Q. How much of that switching charge do you want stricken off? A. Want it all stricken off.

Q. You want it all stricken off? A. Yes.

Q. You are charging a switching charge now, are you?

A. Yes sir.

Q. And you propose in the future to continue that switching charge or to discontinue it?

A. If we do the switching we shall make the charge, but I want it arranged so that it will be unnecessary for us to do any switching.

Q. That is, you want the trains directly into the grain terminals over the Union Pacific tracks without being switched by the Union Pacific, do you?

A. Well, we want them to run the way I have described.

Q. Yes, you want them to run directly from the Union Pacific tracks in to your grain terminals in such a manner that the Union Pacific cannot charge a switching charge? A. Yes.

Q. That would refer to all roads except the Union Pacific, there is no charge, of course, for delivery of Union Pacific cars to you at the present time, is there?

A. Well, it is delivered in such a way that we have to charge for switching them up.

516 Q. Delivered to you at 20th street? A. Yes.

Q. And then you charge for hauling them up to the elevator? A. Yes.

Q. At St. Paul on whose ground are the stock yards located? A. On the Stock Yards Company.

Q. And does the Stock Yards Company operate a system of railroad in connection with the yards? A. Yes.

Q. And your Great Western tracks run over their road do they and make a direct connection?

A. Great Western and Rock Island.

Q. Do you make any switching charge in handling cars to and from the stock yards at St. Paul?

A. We always make a switching charge there and everywhere else where we do switching.

Q. Wherever you do switching?

A. Yes, for other people.

Q. You have testified that the elevators are located on the ground owned by the Great Western?

A. Well, that isn't technically true, if you want to get at the absolute title.

Q. It may be held by some one? A. Yes.

Q. But it is for the benefit of the Great Western?

A. Yes.

Q. And it is your idea that all switching charges for cars that go into those terminals owned by the Great Western should be abolished and wiped out?

A. All unnecessary charges.

517 Q. That is, you think the Union Pacific should furnish trackage and build new tracks and furnish all the equipment in order that the various roads might run over the Union Pacific lines into your terminals and receive no pay for that?

A. Oh, they ought to do what the contracts with their various tenants require them to do and what the injunction and order of the court requires them to do and you ought to do it without any hesitation.

Q. Then you base your opinion that these switching charges should be abolished upon the terms of the contracts with the various tenant lines, do you?

A. I base my opinion that they should be abolished on the principle that no road has legal or moral right to so manage its business as to compel cars to be switched and pay a revenue to them when it is unnecessary to switch them to get them to their destination. As I understand it every railroad that receives grain or any other freight from the country consigned to a locality in the city which they have a right to reach with their own trains, are bound to deliver it to that spot without charging switching and that if they haven't a legal right to reach that place with their own trains they must deliver it to the connecting carrier which will take it at the least expense in money and delay in time to reach that point.

Q. Is that proposition now based upon general legal principles or based upon the contracts between the Union Pacific and the tenant lines?

518 A. General legal principles and the general customs of railroading and express statutes.

Q. All of the tenant lines and all of the roads running into South Omaha have a right to run their trains on to the Stock Yards track, haven't they?

A. That is my construction of the law.

Q. And is there any custom or any contract that provides how far in on that stock yards track they should run those trains? A. I don't know.

Q. What right has the stock yards to make a switching charge for the handling of any cars when all the tenant lines have a right to run right in on the stock yards tracks now, and it is admitted they have that right, what right have the stock yards to make a switching charge for the delivery of any cars a few feet further on the track?

A. Because they do the work.

Q. Will your legal proposition apply to an illustration of that kind? A. I don't see why not, yes.

Q. Well, then if it will apply, although they do do it, because they switch those cars, you insist as a matter of right

and as a legal proposition, that they should not do that switching, and that every road that runs in on that track should deliver those cars to all industries on that track, to all the elevators, coal yards, chutes, packing houses on those tracks without the stock yards acting as an intermediary and burdening them with a switching charge for which there is no necessity?

A. No sir; you have not stated my proposition at all.

519 Q. Then the condition with reference to the stock yards tracks at South Omaha is different from the condition surrounding the tracks that lead to the grain terminals?

A. Not at all. You misstated and I think you intentionally misstated my proposition.

Q. Well, now you state it correctly, Mr. Stickney?

A. I stated that it was the duty of a railroad company when they have the legal right to run their trains to a designated point to an industry if they receive freight consigned to that industry, it is their duty to deliver it without switching charges; now if they haven't the legal right to deliver it themselves and have got to use an intermediate carrier, it is their duty to use the intermediate carrier that has the right to deliver it and will deliver it, if there are two that have the right to deliver it, it is their duty to use the intermediate carrier that will deliver it at the lowest switching charge and with the least consumption of time, and that a railroad coming into where it is connecting with your line out here, has no right to deliver stuff to them hauling it 6 miles one way and 2 miles the other, when they can deliver it direct and save that time and save that cost of switching.

Q. And that proposition is based upon the contracts between the Union Pacific and the tenant lines?

A. No, sir, that is a general proposition that has nothing to do with your contract.

Q. Oh, that is a general legal and equitable proposition?

A. If these tenant companies have that right which is the question that we are trying now, and which the court is going to decide, if he decides they have those rights, then it
520 will be their duty to make those deliveries direct, and in the way I have stated without incurring any switching charges.

Q. In case tenant lines should run directly from the Union Pacific tracks on to either your elevator track connecting at 20th street or the one connecting at G street, do you propose to make any charge at all to these roads for the use of those tracks either in the form of a switching charge or otherwise?

A. I shall expect them to pay a portion of the interest that we pay you for the use of those tracks in proportion to the use they make of them.

Q. And that is all? A. That is all.

Q. In the handling of grain at Minneapolis are you obliged to pay a switching charge in receiving grain from the elevators?

A. We have elevators with, speaking from recollection, an aggregate capacity of probably ten million bushels that our tracks reach and on which we pay no switching charges. Elevators located on other tracks we pay a switching charge on.

Q. What switching charge do you pay?

A. Well, I am afraid I cannot state, it is anywhere from—well, I won't undertake to say, I don't remember.

Q. Can you find out and testify with reference to that later on?

A. Yes. My recollection is the lowest is \$1.50 and it runs up, some elevators that they could not get their grain on to our tracks without passing over two other railroads, and when that is the case it costs two switching charges, would make \$3.00 to \$4.00.

521 Q. What is your object, Mr. Stickney in locating these grain terminals at Omaha and in building or having built these elevators on ground connected directly and only with the Great Western road?

A. Well that was the only ground in Omaha that I could find that I could buy at any reasonable price.

Q. Now what is your object in buying that ground and building up those terminals on your track?

A. Why the object is to give us traffic.

Q. Your prime object is the revenue you get out of the whole proposition? A. Yes.

Q. The freight that the Great Western can move from these elevators to the east?

A. Yes.

Q. Or from any other industries placed upon these grounds? A. Yes.

Q. Who owns those elevators on the terminals down there on Martha?

A. There is only one elevator there now.

Q. Who owns that?

A. Well, it is practically the railroad owns it, the title is in the Independent Elevator Company, the Mason City & Fort Dodge Railroad Company furnished all the money and owns the stock of that company.

Q. Now does the railroad make any storage charge in connection with grain handled through the elevators?

522 A. Yes, we are pursuing the custom there now induced by conditions that we found here and are not responsible for, if a man puts in grain in that elevator and ships it out over the Great Western we do not charge him any

storage. If he ships it out over some other road, we do charge him storage.

Q. Then the elevator itself would get no revenue out of business shipped over the Great Western?

A. No, not as things exist now, what shape they will take a little later I cannot say.

Q. But it does get a revenue on all grain stored that goes out on other lines?

A. Yes under present conditions.

Q. Then, as you stated awhile ago, the whole proposition is just one of revenue for the benefit of the Great Western road?

A. You didn't suppose I was doing it for anything else, did you?

Q. Now your testimony about the movement of grain coming over the Burlington to your elevators, you said that you were either building or about to build a track from 1000 to 1500 ft. long connecting the 1700 ft. track being built by the Union Pacific with the Burlington road so that grain could be switched direct from the Burlington road to this 1700 ft. track without passing upon the Union Pacific main lines, that is right, is it?

A. Yes I stated we were engaged in the construction of that to the extent that we have promised to survey it and make a plan of it and are now negotiating the Union Pacific for the right of way.

Q. Do any other railroads have any other ownership in the Independent elevators or interest in the Independent elevators or in the ground upon which they are located?

A. Oh, no.

523 Q. It is your idea then to so construct tracks and connections between the Great Western tracks, or tracks over which the Great Western have a right to run, and the other roads running into Omaha, that grain may thus be delivered direct and cut the Union Pacific out of any switching charges that it would otherwise get for performing those services?

A. It is my idea that to the extent I have testified to do that. Wherever the Union Pacific does any necessary switching, I think they are entitled to compensation and I don't object to that.

Q. But it is your intention to so construct tracks that all the roads running into Omaha will be connected so there won't be any necessary switching to be done by the Union Pacific?

A. For all industries except probably for the Omaha road, M. & O., and the Wabash, so far as I know.

Q. Then it is your idea that connections can be made with all other roads that run into Omaha that will prevent the

Union Pacific from collecting any switching charges except in the case of transfer of cars from the M. & O., and the Wabash?

A. It is my idea to make arrangements so that grain can go into that terminal without being burdened by any unnecessary switching charges whatever.

Q. You know where the Updike elevator is located do you not, Mr. Stickney? A. Yes.

Q. It is located on the stock yards tracks at South Omaha in the North part of the stock yards grounds, is it not?

A. Well, it is located on stock yards track I presume it is the north part, I don't know as to that.

524 Q. And as a railroad man you are familiar with the switching charges for moving cars in and out of the Updike elevator, are you?

A. Well, Mr. Kenyon told me to-day what the charges were.

Q. And what are the charges?

A. \$2.00 and \$3.00 out he told me. But those are necessary switches, they are not unnecessary, the business cannot be done without them; there is no reason why they should not be paid a reasonable price.

Q. That is a reasonable charge is it, that is a reasonable burden upon the grain, \$5.00 per car?

A. Well, I would rather not express an opinion upon that subject, it certainly would be a burden of \$5.00 if it could be done without.

Q. You are familiar with switching charges, as a railroad man, Mr. Stickney, aren't you? A. Yes.

Q. And in a general way you know how far and under what conditions the stock yards is obliged to move cars to and from the Updike elevator, do you not? A. Yes.

Q. In the bill you have filed in this case you have raised the question of excessive switching charges. You have made the allegation in your bill that if the present condition and custom with reference to switching being done by the Union Pacific prevails, that it renders those switching charges excessive. Now I would like you to express an opinion with reference to the switching charges necessary to move grain in and out of the Updike elevator as charged by the stock yards, as to whether or not for the services performed, those

525 charges are excessive.

A. I think that any switching charge for a switch that it is unnecessary to make is excessive. Now if it becomes necessary in order to make a delivery as it is to industries on your tracks here for you to switch cars for us, I do not think your tariff, which runs, as I believe from \$2.00 to \$3.50, was it, I do not think that is excessive, I think you ought to have it, I think that is a reasonable charge for that service.

Q. You have examined the switching tariff for the Omaha yards in effect Feb. 23, 1897, being Exhibit 13, have you not? (Hands witness paper).

A. This is the tariff that I referred to. I do not from the inspection of this tariff, these 4 and 3 and 2 districts, I do not know what they are, but I have seen this worked out as to the different industries, how much it was, and I have looked it over and I don't regard them in the main as excessive.

Q. But as a general thing you think those charges are about fair?

A. Yes, for that class of work. But the grain business is done on such a small margin that it won't stand those kind of switching charges.

Q. Now, Mr. Stickney, as a legal or equitable proposition, as you have been discussing with the stock yards, having put hundreds of thousands of dollars or millions of dollars into its plant, its track and engines, and yet permitting trains to run in upon its tracks and deliver cars there, what would you say as a legal or just proposition with reference to the necessity of those switching charges to the Updike elevator, ought
526 the other railroads to continue to follow up that track a few hundred feet to the Updike elevator and make a direct delivery and not burden the grain with a switching charge that the evidence shows is in effect.

A. The railroads have no legal right to do it, they can't do it, they have no authority to do it.

Q. Then a switching charge that is unnecessary is one that is made against a legal right or contrary to a legal right?

A. Well, if the Stock Yards Company instead of switching that by the most direct route, switches it five miles down in town and then six miles back for the sake of making a charge, I should say that was an unnecessary and useless expense.

Q. If their charge was the same for that as it is at the present time for a haul of a few hundred feet, what then would you say?

A. I should still say, especially if it requires two or three engines to handle it in the six miles course, because every time a car is set in on a side track and the engine lets go of it and it waits for another to come around, there is a delay of anywhere from 10 to 12 or 24 or 36 hours and that delay means as much to business sometimes as the actual outlay of money in switching.

Q. It is a very usual thing, isn't it, for grain being handled at elevators in various cities of the United States to stand a switching charge?

A. It is always the case where a switching charge is necessary to reach the elevator. Now as I said, at Minneapolis, our tracks reach about 1-3 of the storage capacity of Minnea-

polis; we reach those elevators without a switching charge; the other two-thirds of the elevators are on other tracks
527 and we cannot get that grain without the other roads switching to us and sometimes it takes two switches to get it to us.

Q. And a charge, of course, is made for that and paid?

A. Yes, they are necessary switches and the charge is made.

Q. Now, you have talked of the necessity for certain facilities in building up this grain business. It is necessary, isn't it, Mr. Stickney, to have facilities for building up any business that is handled over railroads? A. Yes.

Q. There is no difference is there, between the facilities necessary for the grain business and the packing house, or the stock yards or any other business of a like magnitude?

A. Well, that general question, I don't know what it might involve, but there are no other businesses of equal magnitude here.

Q. That is the stock yards is of equal or greater magnitude?

A. Well, you said stock yards and grain business; now the stock yards business is of the greatest magnitude there is here. The grain business is something over 30,000 car loads in and 30,000 car loads out, which is probably as many carloads as was handled in and out of the stock yards when the stock yards was two or three years old the same as the grain business, and there is no reason why the grain business should not in a short time reach the magnitude in respect to the cars in Omaha that the stock yards has reached?

Q. There has always been a charge at the stock yards for switching stock has there not? A. Oh, yes.

528 Q. And in spite of that charge which somebody must pay, the stock yards has increased year by year and now occupies a second or third place in the United States, does it not?

A. Yes, the legitimate profits in the grain business is anywhere from $\frac{1}{8}$ to $\frac{3}{8}$ of a cent a bushel. Now you impose \$4.00 a car and \$4.00 out, that makes \$8.00 a car on a thousand bushel that is $\frac{8}{10}$ of a cent, that is more, or as much as the legitimate profit of a grain merchant. Now that is a matter that has got to be considered in this matter.

Q. Well, you know of grain businesses that do thrive and prosper where switching charges are made of from \$5.00 to \$8.00 do you not?

A. I don't know as I do. Now Minneapolis, you spoke of Minneapolis, There are extremely few elevators there if any, I don't know of any, but extremely few that pay any switching charge on the greater majority of grain that comes into them. Grain men won't build elevators on a spot where there is \$8.00

to \$12.00 a car switching charges, to be imposed for them to do business. They can't do it and they won't do it.

Q. But you do have elevators there that do not pay any switching charges, and you have other elevators that do pay a switching charge and they seem to thrive equally well, don't they?

A. I don't think there are but very few elevators there that necessarily have to pay switching charges. Now take the elevators that are on our tracks, they are also reached by the Great Northern and the Northern Pacific tracks and they pay nothing for the grain that comes in on the Great Northern and the Northern Pacific and they confine their purchases largely to those lines, of course, they may occasionally make a purchase
529 on the Milwaukee line or the Soo line, or some other line, when they do that they pay switching charges to bring it in.

Q. Is there any elevator there that pays switching charges upon all the grain taken to and from the elevator?

A. I don't think there is.

Q. What about the handling of grain in Chicago with reference to switching charges?

A. Well, what do you want to know about it?

Q. All of the grain that goes in to Chicago into the terminal elevators pays a switching charge, does it not?

A. Oh, no.

Q. None at all?

A. No, you say all the grain pays switching charges. Now the Northwestern road has a large number of elevators on their line the grain they take in goes to those elevators pays no switching charges; the Milwaukee road has some elevators, some that they own, some that other people own, the grain that goes in on their road goes to these elevators, pays no switching charges, of course if we take grain in there and want to deliver it to the Northwestern elevators, why, somebody has to pay a switching charge to get it there. That is an illustration.

Q. But if an elevator on the Northwestern road receives grain from any other road, it pays the switching charge?

A. I said if our road takes in grain to deliver to an elevator on the Northwestern road, the Northwestern road does the switching and of course gets paid for it.

Q. Do you know what the rates are in Chicago?

530 A. Oh, well, I don't think there is any single switch on grain that is more than \$2.00, there may be but I do not remember any.

Q. In transferring grain from your road to the elevators located on the Northwestern, how many switches does that require? A. One.

Q. That includes the taking of the loaded car in and the return of the empty?

A. Yes, the charge is usually made on the loaded car and the empty returned free.

Q. Do you know of cases in Chicago where there is more than one switching charge paid?

A. Oh, yes.

Q. What instance can you recite?

A. But they are not unnecessary switching charges, there is no way of getting there without using more than one road.

Q. What instances can you recite of payment of two switching charges?

A. Well, I don't think of any, of course you could make up combinations that would make it if there is any switching done. For instance, the Milwaukee road switches their grain from over on to the Northwestern road, the Northwestern elevators, I think there would be two switching charges there, but as a practical thing there is none of that kind of business done.

Adjournment was here taken to 2:30 P. M.

531 Wednesday afternoon, June 20, 1906, 2:30 P. M.

A. B. Stickney was questioned further by Mr. Rich as follows:

Q. Mr. Stickney, the Omaha Bee of Wednesday, June 20th, reports you as saying among other things, at the dinner at the Commercial Club, on Tuesday, the following: "Hence these two elevator companies are entitled to have grain arriving at Omaha on the Chicago, Burlington & Quincy, the Chicago and Northwestern, the Chicago, Rock Island and Pacific, the Missouri Pacific, the Chicago, St. Paul, Minneapolis and Omaha railways as well as the Union Pacific, switched to their elevators in Council Bluffs for nothing, while the other nine elevators in Omaha and Council Bluffs are compelled to pay, in order to get such grain to their elevators, from two dollars to six dollars per car, and the same amounts for getting their grain switched from their elevators to the outgoing lines, a discrimination in favor of the two favored elevators of from four dollars to twelve dollars per car;" it is a fact is it that there are elevators in Omaha that are handling grain on which the outside switching charges amount to twelve dollars per car?

A. In and out, yes; that is I do not mean all of that amount.

Q. On some parts of it? A. On some parts of it.

Q. How long have those elevators been doing business on that basis?

A. Oh, they have been doing business a year or two years, I should think.

532 Q. And when these elevators that are now paying twelve dollars switching charges in and out went into business, those switching charges were in effect, were they?

A. I presume they were, yes.

Q. I believe you made a statement that these switching charges were a great and unnecessary burden upon the grain shipped into Omaha? A. Yes.

Q. Do any of these switching charges as a matter of fact fall as a charge or burden upon the grain that is handled?

A. Yes sir; upon the grain.

Q. Upon the grain?

A. Upon the grain; not usually upon the grain merchant, because under the present conditions the competitive road assume most of it, not all of it.

Q. In other words the man that sells the grain to the man that runs the elevator does not pay any of these charges, nor do these charges affect the price he receives for the grain?

A. He pays them in the first instance and he gets the major portion of them back under the competitive conditions.

Q. So that the man that sells the grain does not pay or lose out of his pocket, in fact, any portion of these charges, of these switching charges, does he?

A. I explained that in the statement that you read from yesterday, that owing to the fact of the competition and action of the elevator in the allowance of a cent and a quarter a hundred weight and under switching charges that the railroads up to this time had adopted and issued tariffs that in my opinion were unlawful, inasmuch as they assumed these switching charges and paid this rebate, as I call it, of a cent and a quarter a hundred to all the grain dealers here except the Peavey, so as to put them on terms of equality with Peavey, I stated that.

Q. To get back to the question again: then, the man who sells the grain does not pay any portion of these charges?

A. I will answer that the same as I did before, that the greater portion now, under the present competitive conditions here are assumed by the railroad companies.

Q. You say the greater portion. Does the farmer that sells this grain, or the small grain merchant in the country town that ships it, pay any portion of these switching charges?

A. Oh, that is pretty remote; I do not care to express an opinion on that. They do not directly pay that, of course.

Q. No, certainly not. A. Not directly.

Q. Now, does the man or the company that own and conducts the elevator in the city of Omaha that is obliged to pay twelve dollars switching charges in and out, pay any of that himself or itself?

A. I said before, that in some cases they do pay, but the

great majority of it is paid at present by the railroad companies.

Q. So the loss of the switching charges falls ultimately upon the railroad companies at present?

A. At present; yes sir, but if the interstate commerce law is enforced they have to fall on the grain dealers.

Q. That is a matter of the future?

A. Well, I do not know whether the interstate commerce law is a matter of the future or not; it is on the state books now.

534 Q. If the grain business in the city of Omaha increases in the future as you have testified you have good reason to think that it will increase, that would tend to increase the business proportionately over the Union Pacific lines, or that portion of the grain business done by the tenant roads, would it not? A. I suppose it would.

Q. And the Union Pacific Railroad Company has been for several years, and is at the present time, spending large sums of money increasing the facilities for handling business on the bridge district, is it not?

A. That I do not know. You know we are not trying to get—

Q. You do not know that? You know that the improvements are being made constantly to get the tracks laid, don't you?

A. I am not aware that any had been made since I have been acquainted with it; I was not aware that any tracks had been laid since I had been acquainted with it.

Q. You were not aware of it? You are aware that the Chicago Great Western and the other tenant lines, under those contracts can terminate them upon three years notice?

A. I never noticed that provision in the contract. The Great Western has no contract. I suppose we can stop operating whenever we choose.

Q. You think the Great Western can stop any moment, do you?

A. Well, that is a question of law; I do not know why they could not.

Q. Did you ever examine the contracts with the Rock Island, Northwestern and Milwaukee railroad, under the three year provision? A. No, I never did.

535 Q. The contracts on the face are for nine hundred and ninety-nine years, are they not?

A. I never noticed particularly about that.

Q. You never noticed that?

A. No sir; I ran over the provisions but—

Mr. Kellogg: Well, they show for themselves.

Mr. Rich: They show for themselves.

Questions by Mr. Kellogg:

Q. What do you base that statement on that Mr. Rich cross examined you about in relation to the free switching to the Peavey elevators?

A. On the contract that is existing; I have a copy of it in my pocket; between the Union Pacific Company and the Peavey Company.

Mr. Kellogg: I do not care about the whole contract going in evidence, but I would like that sixth clause, or I will put the whole contract in it if you want it; or he can state the substance of it.

Mr. Rich: Well, we do not admit we signed it at all.

Mr. Kellogg: Will you read the 6th clause of the contract under which that statement was made.

Mr. Rich: Objected to as immaterial.

A. "Sixth. The railroad company agrees to provide said Peavey for said elevator equal privileges and advantages as it may grant to the proprietors of any other grain elevator or elevators that are now or which may hereafter be located
536 on or served by said railroad company at Omaha, Nebraska, or Council Bluffs, Iowa, and that all cars coming from or going to any point or points on said railway to or from said elevator, and not less than ten miles from Omaha, shall be switched whether loaded or empty to or from said elevator free of charge."

Q. And in addition they paid a cent and a quarter a hundred pounds to Peavey & Company for all grain unloaded into the elevator, did they not? A. Yes sir.

Q. You were asked by Mr. Rich, if you constructed the elevator to make money for the Great Western road and answered that you did, which was very naturally, and that you charged the Great Western no storage charges for grain that was shipped here on the Great Western road? A. Yes.

Q. Why did you propose to make the elevators or the tracks or the elevator ground free and open to every company on the same terms as you used them yourselves? Please explain that. You did not explain that fully.

A. I wanted to put those elevators that might be built there on an equality with the elevator district of the Union Pacific where the Peavey elevator and Union elevator are now in regard to the switching, and so forth, and I conceive that it is to the interest of the Great Western road to get as much grain into those elevators as possible, and for that reason I want to

make it as cheap, both in respect to money and in respect to time for getting it there, as possible.

537 Q. But your proposition includes, does it not, allowing any company to go in there and take grain out same as putting it in? A. Yes.

Q. You do not intend to limit the use to grain shipped out over the Great Western line? A. Oh, no.

Q. You stated you were paying their proportion of interest on the cost? What do you mean by that?

A. The interest on the cost of the tracks and the interest that I am compelled to pay the Union Pacific and its connecting lines, and the proportion of the maintenance on the basis of the number of cars put in by each company.

Q. That don't include the ground on which the elevators stand or the elevators, or anything of that kind? A. Oh, no.

Q. Just simply the use of the track? A. Yes sir.

Q. Did you, or do you now propose to make any conditions there in relation to the use of the track for other companies different from that with the Great Western? A. Do not.

Mr. Kellogg: I think that is all.

Mr. Rich: That is all.

Witness excused.

538 J. D. Clancy, recalled as a witness on the part of the plaintiff, testified as follows:

Questions by Mr. Kellogg:

Q. I show you a statement which may be marked Exhibit

51. Is that prepared from the exhibits numbered 16 to 22?

A. That includes the train sheets there?

Q. Yes sir.

A. I cannot say as to those figures, but Mr. Chase and I checked it, if that is what he prepared from what was furnished yesterday.

Q. Yes sir.

A. Yes sir. Yes, that is what he prepared; he gave it to me and I checked it up here.

Q. Yes sir.

A. Of course I cannot tell as to the train figures he has here, but this is taken for accuracy from the report.

Q. You read it to him?

A. Checked off the trains there.

Q. O, the trains there? A. Yes sir.

Q. Making a certain division of territory? A. Yes sir.

Q. The first being from 11th Street to Summit?

A. Yes sir. Taking through to Summit and South Omaha.

Q. The next is Summit to South Omaha?

A. That is it: 11th to 16th, 16th to 20th, 20th to Summit and 20th to South Omaha. The trains come out like that train come out at 20th street and go to South Omaha; 539 they go by the Summit.

Q. Yes, I understand. It is shown in columns, and the column 11th street to Summit shows all of the trains that started at 11th street and went clear through to the Summit?

A. Yes sir.

Q. And shows the average per day, if the figures are correct? A. If the figures are correct.

Q. You read those off to Mr. Chase, and he set them down?

A. Yes sir. That is we made a tally and checked them.

Q. You checked them back and forth?

A. No, we didn't check back and forth; I called them off to him and he put them down.

Q. I will ask him as to that. A. Yes.

Q. The second column shows the same thing, trains that ran clear through from Summit to South Omaha?

A. Yes sir. That would be including from Omaha to Gilmore, that is through trains.

Q. The third column headed 11th street to 16th street shows those movements which took place between 11th and 16th street and didn't go beyond either way.

A. Yes; Oh, well, they might have went to 18th or something like that; but they did not go beyond that.

Q. Practically did not go beyond that?

A. It is what we call 16th street.

Q. The third, fourth and fifth show the same things?

A. Yes sir.

Q. As to the destinations named? A. Yes sir.

540 Q. At 11th street, as I understood you, all engine movements that went west of 11th street are counted in from 11th to 16th?

A. West of 11th street?

Q. Yes sir. A. Yes sir.

Q. At that place the freight yard and the passenger yard are separate, are they not? A. Yes sir.

Q. How many freight tracks are there?

A. There is just the two, east bound and west bound main lines.

Q. How many passenger tracks, are there, main tracks?

A. There would be six, three east and three west.

Q. Six, counting the rest of these tracks west of the signal?

A. West of the signal.

Q. West of 11th street?

A. West of the signal at 11th street would block the main line.

Q. Would be counted? A. Yes sir.

Q. You would count a movement on the freight track, freight main tracks west of 11th street, although they did not go over and touch the passenger tracks, wouldn't you?

A. They might give them the signal, when they come up by the signal, that you have got the passenger train blocked. You could not make a move then.

Q. Whatever movement was made west of 11th street, whether on the freight tracks or over in the passenger yard, is counted?

A. So it blocks the main line.

Q. Where are the tracks?

A. The freight main tracks and the passenger main
541 tracks come together; they cross right in front of the tower.

Q. On what street?

A. On 13th. I believe you were right there last evening and seen right where they cross.

Q. Well, I did not notice through there.

A. You and Mr. Stickney.

Q. Yes, we went down there. Where is that tower?

A. 13th and Mercy. I was looking right out of the window.

Q. And the passenger tracks and the freight tracks come together at that point?

A. Yes sir, cross right there.

Q. I did not notice it, but I presume that is correct. So that any movement on any one of the six tracks in the passenger station west of 11th street, is counted as a movement is it?

A. Yes sir. That blocks—that stops the movement either way.

Q. Do you mean that?

A. Yes sir, in the passenger yard, stops the west bound freight movement you understand.

Q. I understand, but when a block is thrown by the passenger train going west of 11th street on the main line, does that prevent the switch engine switching in the throat of the 6th street yard on the freight tracks?

A. In the 6th street yard?

Q. Yes sir.

A. It does up to the signal, up to the back-up signal.

Q. Beyond the signal? A. Yes sir.

Q. It does not prevent it east of the signal?

A. Oh, not east of the signal. We do not get up on
542 the main line until we get pretty near to the signal. We are counting movements where they block the main, where they come out to interfere with another train, where you cannot make another move.

Q. You count every engine that passes over 11th street?

A. Yes sir.

Q. Whether that goes up as far as 13th or not?

A. Which comes up to the signal to block the main line.

Q. You count it? I do not know as I understand you, that is all; I want to get this through my head. I do not know as much about it as you do. Suppose an engine from the 6th street yard goes west, 20 feet west of 11th street, is that counted in the movement?

A. Not unless it comes up to block the main line.

Q. Not unless it comes up to block which main line?

A. If it comes up to the signal, you understand you can't make a movement; if you had a passenger train in there, Great Western passenger train from the west—

Q. West don't count here.

A. It may be Rock Island train headed west to their next station, and that movement there in the yard, whatever engine it is you have reference to, you give them the signal over at 11th street, which stops the movement of this passenger train until this train either proceeds out the main line cross over or any track in here beyond the 11th street viaduct.

Q. Do you turn the signal every time an engine does switching in the 6th street yard crossing over 11th street and going west of it, say 10 feet? A. Well, not 10 feet.

Q. Well, 20 ft?

543 A. Why probably—well, I would not say as to the distance; it may be a little more than 20 feet and it may not be, up to the pole. Sometimes they have to go up to the table over here that is in the freight yard, and they give them the track, give them the freight track and cross over the block. Last night you were over there and noticed trains that came up a little bit and crossed over in there, both east and west bound. You saw Union Pacific freight trains come out 11th street and go on west; then you seen it block the passenger train going west, did it not?

Q. To tell you the truth, I was not watching blocks; I did not pay much attention to it.

A. No, but the movement of the trains that they made right there— Yes sir, that blocks everything.

Q. Then if Mr. Chase took down those figures correctly, that represents a correct statement of the movements between each division as stated there?

A. Yes sir, that is to South Omaha.

Q. Yes, I understand. Well, I can find out by Mr. Chase. That is all I want to get.

(No answer.)

Questions by Mr. Rich: Q. When you say to South Omaha, what do you mean? To what point in South Omaha?

A. Well, that includes it would be to the N. street crossing.

Q. Would that include the movements of trains on the four tracks set aside for the use of the tenant lines south of N street, and just west of the west bound main line?

544 A. You mean outside the main line?

Q. Yes sir.

A. No sir; nothing but the main lines is taken in there; everything there is a main line movement, Mr. Rich.

Q. Then there might be any amount of switching from the Stock Yards cross-over on to another of those four tracks, or any other tracks there, that would not be shown on this statement that is, if it did not go as far as the west bound main line?

A. No movement of the trains on the cross over; to illustrate now, we had a Milwaukee bridge run down there, which had gone right ahead of the Union Pacific No. 7 due out of here at 11:30.

Q. What did you say then?

A. Well, that is immaterial as far as that is concerned. Do you wish it in?

Q. Go on.

A. This Milwaukee bridge run had twenty-two cars, and they were down there and No. 7 was then due out of Omaha in about five minutes, and the switch tender said the stock yards people refused to let them in, at that time they were switching out, had everything blocked before I could get that out of our way, and I told them to cross over on the U. P. east bound line; that would clear everything for No. 7; we had to go at that in time to clear everything for this passenger train. We find it very hard at South Omaha, at times, to keep everything open for them.

Q. Does that touch the main line? A. Yes sir.

Mr. Kellogg: Everything there that touches the main line is counted?

545 A. Yes sir; where they block another movement.

Q. There may be any number of movements up and down the tracks parallel with the main line, but you do not count anything that don't block the main line.

A. Yes sir, that is the idea. When they open the switch to head out, as we call it, on the main line here, they hold the block against the next train, whatever would be coming.

Q. I understand from what you said to Mr. Kellogg, that there might have been a great many movements of trains on the freight tracks just west of 11th that would not be counted? A. Oh, yes.

Q. Or do not count?

A. Might just come out on the switch and back in again, something like that.

Q. You only count such movements west of 11th as run far enough west on any track to block the main line?

A. That is the idea, to block the trains that want to move past there where this switching was interfering with. It was as I told Mr. Kellogg if it was a passenger train in the Union Station wanted to move west.

Q. And it would have the effect of blocking the main line?

A. Yes sir.

Q. Whether there was any train in sight or not?

A. Yes sir; that was the idea.

Q. Are there connections between those freight tracks just west of 6th street and east of a point where they would throw the signal? A. You mean east end of the yard?

Q. No. Are there connections between the freight 546 tracks and at a point west of 11th street out far enough east of the tower, so that they can run on one freight track and then back in or enter without that signal being thrown?

A. Oh, well, that never goes out on the switch; they can't do that; the chances are they come clear up in here, at that here (indicating); that is the way they do the switching down there.

Q. An engine might move west of 11th street on this first main track shown, and then back in on one of the three main tracks there shown? A. Yes sir.

Q. Without going far enough west to throw the signal?

A. Yes sir.

Q. And a movement of that kind would not count and did not count?

A. No, not unless he got out here to block this main line out here; that is the idea.

Q. How far west of 11th street would the engine have to proceed to throw the signal or block the main line?

A. I do not know just how far that is.

Q. As far as 12th street?

A. No, no, I don't believe it is up as far as 12th street would be.

Q. It is between 11th and 12th?

A. Between 11th and 12th, that is as near as I can recollect. I never noticed it in particular.

Questions by Mr. Kellogg:

Q. There is no connection between the freight track, main tracks, and the passenger main tracks, until you get to 13th street?

A. No; it is about in front of the tower where they cross over; it may be a trifle east of the tower.

547 Q. Well, substantially. I am not figuring exactly.

A. Yes, it may be a trifle east of there, where they start to cross over, where you noticed changes now that you spoke about west of 11th street; because it is interlocking, it has to be for protection.

Q. So that substantially, all movements made west of 11th street, you give them the signal?

A. Well, wherever a regular train comes up and the engineer calls for it, providing you are not interfering with the incoming passenger train or the outgoing passenger train, or any train of any importance; you know some of the time we have to hold a switch engine in; you have to use judgment on that certainly.

Q. There is a great deal of switching in this 6th street yard?

A. Not so very much at this west end: they do pretty near all the switching in the east end, making up their trains.

Q. There was a considerable number of engines going up and down there last night?

A. You were right out there about the time they were bringing the freight house stuff up there from the freight house. I was on duty at the time.

Mr. Kellogg: That is all.

Mr. Rich: That is all.

Witness excused.

548 J. E. Wright, called as a witness on the part of the plaintiff, being duly sworn, testified as follows:

Direct Examination,

By Mr. Kellogg:

Q. Give us your name and your occupation?

A. J. E. Wright, Yard Master for the Rock Island.

Q. How long have you been a yard master for the Rock Island Company? A. Since March 21st.

Q. What year? A. 1906.

Q. What were you doing before that time?

A. I was employed as switchman in the Rock Island yard at Council Bluffs since last August.

Q. Before that time what were you doing in connection with any of the yards in Omaha which somewhat familiarized yourself with the Union Pacific tracks?

A. I was employed as a switchman and engine foreman in the Union Pacific yards from 1886 on until 1891.

Q. After that were you engaged here in Omaha at all?

A. Not until 1901.

Q. Then you went to work for what company?

A. During that time I was seven years yard master for the Union Pacific at Grand Island, Nebraska; and I was three years a yardmaster in Ohio; one year and a half at that time for the Wheeling and Lake Erie; and a year and a half for the Pennsylvania Company.

549 Q. I don't care so much for that. State what yards the Rock Island Company have at Albright?

A. We have a small yard there of four tracks that will hold about thirty five or forty cars each, and a spur track that holds eleven cars. There is a house track there that will hold about twelve or fifteen cars, in that neighborhood.

Q. That yard is at your connection with the Union Pacific Railroad, just a short distance south of South Omaha, isn't it?

A. Just west of it, yes sir.

Q. Now, take dead freight for any place in South Omaha, or for the Great Western grain terminals, where would it be set out, and how would it be handled?

A. For South Omaha or the Great Western grain terminals?

Q. Yes.

A. For South Omaha, under the present arrangement, would be set out at Albright.

Q. And handled with a switch engine?

A. Handled with a switch engine and delivered to the Stock Yards Company at South Omaha.

Q. Suppose you had grain and were allowed to deliver it to the Great Western grain terminal, how would you handle that?

A. If we were allowed to deliver the grain to the Great Western grain terminal direct, we would have them set out at Albright, and deliver them with the switch engine.

Q. You would run your grain train that came from the west down onto the tracks at G street and switch on the grain tracks, would you? A. No sir.

Q. Do you know whether the Rock Island Company has interchanged freight between it and other companies at 550 South Omaha through the Union Stock Yards tracks or not? A. Yes, I know that we have.

Q. For how long?

A. Well, since I have been with the company. I could not say as to any length of time before that.

Q. What is that?

A. Since I have been in the employ of the company.

Q. With what companies at South Omaha have you exchanged business through the Union Stock Yards track?

A. In to all companies that might have business to interchange.

- Q. Name some of them?
- A. Missouri Pacific, principally.
- Q. Any others? Principally to Missouri Pacific?
- A. Principally to Missouri Pacific, yes sir.
- Q. Do you think you have exchanged with any of the other lines?
- A. Yes sir; we have exchanged with the Great Western.
- Q. Through the Union Stock Yards tracks?
- A. Grain for the Independent elevators.
- Q. Have you with the Northwestern or Burlington, or don't you know?
- A. I would not be positive about that. I never looked up the record of it.
- Q. But you know you have with the Missouri Pacific?
- A. Yes sir. Do that daily.
- Q. Assuming this connection, the red line shown on this map, to be made between the Great Western grain terminal and the Union Pacific at about G. street, state which is the most expeditious way to deliver grain by the Rock Island Company to the Great Western grain terminal?
- 551 A. With that connection built, you say?
- Q. Yes sir.
- A. It would certainly be the most expeditious to deliver direct to the Great Western through that connection.
- Q. Did you hear the testimony of the witnesses called by the Union Pacific that at the present time, if any grain was to be delivered to the Rock Island, they would require it to be switched down and put into the 6th street yards, and that they would there take it and put it into the Great Western 20th street yards and the Great Western take it from there to the grain terminal? A. I did.
- Q. Which would use the Union Pacific tracks the most, and tend to the most congestion—handle the grain that way, or for the Rock Island to deliver directly to the Great Western grain terminal?
- A. It would congest it more and use their main tracks a great deal more to deliver grain on their proposed plan.
- Q. Do you know of any reason why it would use the Union Pacific tracks more for you to deliver this direct to the Great Western terminal than to have the Union Pacific do it?
- A. I can't see wherein it would.
- Q. Suppose the other companies reaching South Omaha, the Missouri Pacific or the Burlington, could get direct connection, or the Northwestern could get direct connection with the grain terminals, would it use the Union Pacific tracks as much or burden them as much, or congest them as much, as it would to haul the grain down to 6th street and deliver it the way the Union Pacific insist on?

552 A. I do not think it would congest it any more. Of course the Burlington would not handle their grain in that manner.

Q. I ask you if they did deliver it at the west end, would that be the most simple way to handle it direct into the Great Western? A. No.

Q. If the Burlington had connections, I mean?

A. No, it would not.

Q. That would be the simplest way to handle it?

A. For the Burlington to deliver it into the Independent elevators tracks?

Q. Yes sir, direct. A. Certainly.

Q. The same reasons would apply as apply to the Rock Island? A. I see no reason why it wouldn't.

Q. Then if you would bring freight from the east to be delivered to a line connecting with the Union Pacific through the Union Stock Yards—or limit that rather to the Missouri Pacific, where do you deliver it?

A. Through the Stock Yards to be delivered to the Missouri Pacific?

Q. Yes.

A. The regular delivery track, what is known as No. 2 track.

Q. You would deliver it to the Union Stock Yards Company? A. Union Stock Yard tracks.

Q. Did you make deliveries direct through to the Missouri Pacific, paying the Stock Yards Company their charge?

A. Make direct deliveries to the Missouri Pacific?

Q. Yes.

553 A. Well no and yes. We have taken freight to the Stock Yard Company and their track would be filled up with other cars, and the Yard Master or Yard Clerk would come out and ask us to shove it on the Union Pacific and we have done so, setting the switches right for the Missouri Pacific track.

Q. If the Rock Island should bring in grain from the east, under the present regulations that the Union Pacific make, to be delivered to the grain terminals, where would it have to deliver it now? A. At 20th street Union Pacific yard.

Q. How do you get it there?

A. We would bring it from Council Bluffs, in what we term bridge runs, with the switch engine.

Q. With a switch engine? You would break your trains up at Council Bluffs? A. Yes, sir.

Q. Then you take the grain over the bridge and haul it up to the west end of the 20th street yard?

A. To the west end of the 20th street yard and take it into the Union Pacific tracks.

Q. 20th street? A. 20th street, yes sir.

Q. Then what did the Union Pacific do?

A. Union Pacific would switch it out of there onto the Great Western tracks at 20th street and deliver it to the Great Western?

Q. Do you know whether the other companies would do the same thing? A. The other companies, you say?

554 Q. The other tenant lines handle their grain in the same manner?

A. Yes sir; so I am told by them, and have seen them a time or two, doing the same.

Q. Would it use the Union Pacific tracks any more for you to shove it right in into the Great Western terminal at the same time? A. How is that question?

Q. Would it use the Union Pacific main tracks any more for you to shove it right into the Great Western 20th street terminal at the same time, instead of shoving it in the Union Pacific Company's 20th street yard? A. Not a particle.

Q. So, if the track was so constructed that leads down into the grain terminals at 20th street, the red mark on this map,—was so constructed that you could run right in coming from the east onto the grain terminal, state whether or not in your opinion, it would use the main tracks of the Union Pacific any less for you to do it, than to do it the same as it is done now?

A. That would depend on where I would get off the grain terminal onto the Union Pacific tracks again.

Q. I mean right there at 20th street, head in instead of going up and backing in,—head right in?

A. It would use their main tracks a great deal less, very much less from the place that you head onto the main terminal tracks onto the point that you leave the grain terminal tracks and return to their main line.

Q. Where did you interchange most of the freight which is brought to Council Bluffs to go west on any line other
555 than the Rock Island line, to go west of Omaha?

A. At Council Bluffs.

Q. Why did you do it there?

A. It is the most convenient place, a place set apart for that part of the business to be handled by the different companies.

Q. You break up your trains there?

A. All of them, yes.

Q. And everything between there and South Omaha is handled as a bridge run, you say?

A. Everything except our through west bound trains.

Q. Those through train run west on your own line?

A. Run on the Union Pacific terminals to our connections with our line, at South Omaha, South Omaha junction.

Q. You heard the testimony of the witnesses here that the Rock Island has no freight house in Omaha? Has it?

A. No, sir.

Q. The Rock Island has no freight house in Omaha?

A. No, sir.

Q. Your local freight is delivered to the Union Pacific at what place? A. 20th street.

Q. That includes freight for what lines, for what places? For the Union Pacific freight house, or team tracks?

A. Union Pacific freight house, team tracks, and all industries located on Union Pacific tracks, also for the interchange of business which we might have with any other line in Omaha.

Q. In Omaha?

556 A. We deliver to the Union Pacific and they deliver to connecting lines.

Q. Industries on their tracks, you mean?

A. To industries on their tracks.

Q. But that is local business, all, isn't it? A. Yes sir.

Q. You do not deliver other business, you mean, down in that yard? A. It is Omaha business proper.

Q. Omaha business proper? A. Yes sir.

Q. You do not deliver any other business as a usual thing in Omaha to be delivered to other lines, do you? A. No sir.

Q. You make those exchanges yourself?

A. Those exchanges are made in Council Bluffs with all the western lines.

Q. Or through the Union Stock Yards tracks at South Omaha?

A. Yes sir; we do make some exchange through the Union stock yards at South Omaha.

Q. You do not know if the Rock Island has ever assumed or claimed the right to run its trains on the side tracks to private industries on the Union Pacific, do you?

A. No sir—Your last question I answered no, sir, and I believe that we made an attempt to deliver an empty car to some company right down here at one time, and were defeated in it.

Q. I speak of the industries on the Union Pacific tracks?

A. That is correct, no sir.

557 Q. You did undertake to deliver an empty car to be filled with grain at the Great Western 20th street yard, didn't you? Or Great Western grain terminal, didn't you? A. Yes sir.

Q. Were you allowed to do it? A. No sir.

Q. Who prevented you? A. Union Pacific employees.

Q. About what time was that? Last May or April?

A. Last May, the third day of May, I believe, if my memory

serves; I can produce exact figures; I think it was the third day of May.

Q. Where did you attempt to make that delivery?

A. I attempted to get onto the grain terminal tracks, the Great Western tracks, at 20th street.

Q. The southern connection has not yet been constructed, has it?

A. No sir. It is under construction at the present time, so I have been told, and I have seen them working on tracks there that I presume was for that purpose.

Cross Examination,

By Mr. Rich:

Q. What do you define "yard" to be?

A. The portion of the tracks set apart for the handling of business, such as making up trains, breaking up trains.

Q. Are movements in the yard governed by any other rules than movements on main lines?

A. They have rules set apart for that purpose, yes sir.

Q. What is that?

A. By rules set apart and maintained for that purpose.

Q. Are the trains all switched under the control of
558 train ordinance?

A. No sir; not usually from the place where they are.

Q. Where are these tracks that hold thirty-five or forty cars? How far south of Swift's packing house?

A. The first switch leading to the yards is right at the corner of Swift's fence?

Q. Right at the corner?

A. Probably three feet from the fence, two or three feet, that is as close as a switch could be placed and operate conveniently.

Q. Do you keep a switch engine down there?

A. We have a switch engine going down there, running four trips a day down there.

Q. Where from? A. From Council Bluffs.

Q. If you have a car down in the yards at Albright to switch, you have to take the engine from Council Bluffs down there to switch that car with, do you?

A. We send the switch engine down there regularly to do that work daily.

Q. You do that? You do not keep a switch engine down there?

A. No sir, we have no round house down there with provisions for a switch engine.

Q. If you have a car on one of those tracks in the yards at Albright to switch into the main grain terminal, provided that was allowed, you would have to run a switch engine from Council Bluffs to your yards over the west bound Union Pa-

559 cific main line, pick up that car, run up over the east bound main line to G. Street with it into the terminals, and then back over the east bound main line to the yards, or on through the terminals to the east end of 20th street, with connection across the west bound main line there, and go on the east bound main line before you could go back to Council Bluffs, wouldn't you?

A. Not specially to do that work. We have regular work that we do make those runs for, as I stated awhile ago, four times a day. In making those runs we clean up all our business.

Q. You make those runs down to those yards at Albright from Council Bluffs?

A. Yes sir, we do. It would make many more runs with that engine and handle the grain under the proposed plan better than we can at the present time handle our present business.

Q. Does the movement of grain on the Rock Island constitute a part of the four trips you say you have down there?

A. No, sir, it does not.

Q. You say when you have any car to set into the Stock Yards to handle in South Omaha, you do that with a switch engine?

A. Everything with the exception of our live stock.

Q. Everything with the exception of the live stock?

A. Yes sir. From the west.

Q. When a man comes into South Omaha from the west with a train of thirty cars, five cars of that train being live stock for the stock yards, how do you handle that train and those five cars?

A. They pull up to South Omaha and set off the stock at the Stock Yards Company, and proceed to Council Bluffs with the remainder of the train.

560 Q. You run over your connection South of Q. Street onto the Union Pacific east bound main line coming from the west? A. Yes sir.

Q. Then you run up the east bound main line to a cross over just south of N Street, or at N street?

A. Just south of the Union Pacific passenger station—or north of the Union Pacific passenger station, I should say, not south.

Q. Suppose those five cars are on the head end of the train? How would you handle them?

A. We stop and set off the stock.

Q. You stop your train on the east bound main track?

A. On the east bound main track.

Q. And set off the live stock? A. Yes sir.

Q. You uncouple the five cars from the balance of the train and take your road engine that is attached to that freight train,

and where do you go? How do you get off of the east bound main line with the five cars?

A. Had a switch just north of the Union Pacific passenger station.

Q. That is you pull up?

A. And back into the stock yards.

Q. Pull up on the east bound main line with the five cars and road engine until you come to the cross over from the east bound line and pass over the west bound main line and go from that into the stock yards? A. Yes sir.

Q. You shove the five cars off?

561 A. That is correct.

Q. Then you pull your engine out over the west bound main line and back onto the east bound main line, and back down and attach onto your freight train?

A. Yes sir.

Q. After you take the engine down on the east bound main line, and attach it onto the freight train, is it necessary to recharge the air?

A. No, it is not necessary to recharge the air on the train, not for that length of time, no sir.

Q. It is not necessary? A. No sir.

Q. Then, you pull that train out for Council Bluffs?

A. Yes sir.

Q. In making that delivery of say five cars, how long does that take you?

A. That depends a great deal on circumstances; if everything is clear that delivery can be made in five minutes.

Q. And if the trains are congested or not clear, then the length of time it takes to make the delivery depends wholly upon the conditions and circumstances.

A. Every minute of course, you are delayed detains you that much longer, no question about that at all.

Q. How long would it be necessary to have the engine away from the train before it would be necessary to recharge?

A. That depends wholly on the train.

Q. What do you mean by that?

A. The condition of the air on the train.

Q. Ordinarily how long?

562 A. Well, ordinarily, I should say thirty minutes, if the air is in good condition.

Q. If in a freight train, you have some cars of freight for delivery to team tracks or industries on Union Pacific tracks, you continue on up to the yards at 6th street, and at that point you set those cars out? A. Yes sir.

Q. Suppose you had a car of grain in there for the Chicago Great Western, in that train, would you set that out at 6th street, or take it on over to Council Bluffs?

A. If it was billed to Omaha, we would set off at 6th street under the present arrangement.

Q. If it was billed to Omaha, you would set it off at at 6th street and the Union Pacific would deliver it?

A. To the Great Western, yes sir.

Q. You are doing that now, are you?

A. Well, I can't say that we are. We are not handling any grain at the present time in that manner.

Q. When did you cease handling grain in that manner?

A. Well, since I have been in charge of the yard, we have not handled but a very little grain to the Independent elevators.

Q. But since you have been in charge of the yard, you have delivered some grain for the Great Western at 6th street?

A. Not to my knowledge, no sir.

Q. Not to your knowledge? Where did you deliver that?

A. The only car I remember of that we have delivered since I have been in charge—well, let us see; that is not during my time either; I found a car of grain being delivered through the Union Stock yards. It was not billed direct to the
563 Independent elevator, or it would have been handled in the manner I have just stated.

Q. The billing makes a difference, does it?

A. Certainly it does, yes sir.

Q. Suppose it is billed to Omaha, what does that mean? Where do you deliver it?

A. Any cars billed to Omaha proper are delivered by our east bound freight train at 6th street, to 6th street yard.

Q. If it is billed to Independent elevator, Omaha?

A. It is handled in the same manner; any cars billed to any industry in Omaha would be handled in that manner.

Q. Would be handled in that manner? How would it be billed if you would handle it through the Stock yards?

A. It would be billed to the individual party, or be billed to Albright, held stop at Albright, or something of that nature, perhaps for examination of the grain.

Q. Billed to the Independent elevator, held or stopped at Albright, you would then deliver that?

A. Would not necessarily want to be billed to the Union elevator. Most of the grain comes billed to the other party, is reconsigned to the Independent elevator or other elevator; that would be set off at Albright and held for instructions from the freight department.

Q. Do you get demurrage for cars held at Albright for a certain time? A. Yes sir.

Q. Has the Rock Island been bringing in any grain for the Uplike elevator? A. Yes sir.

Q. How did you handle that?

564 A. Delivered it to the Stock Yards Company at South Omaha?

Q. How? A. With a switch engine.

Q. With a switch engine?

A. From Albright, yes sir. In other words to go into detail, the train comes into Albright and sets the cars of grain off for the Updike elevator, at Albright. Our switch engine switches it to the Stock Yards Company for the delivery to the Updike elevator at South Omaha, and leave on their tracks.

Q. And stock is the only thing that your freight train delivers? A. Yes sir.

Q. To the Stock Yard tracks?

A. Yes sir; I would not say that they never did deliver anything else but stock; there have been times when they came along and had other cars with the stock and set them off; but they have positive instructions at this time to deliver nothing but the stock; all other cars to be set off at Albright.

Q. How long have you had those instructions?

A. They have been repeated; that is a standing instruction; they have been repeated recently, from the tracks—well, it is not necessary here to explain how it came about.

Q. Do you do very much switching at South Omaha?

A. At South Omaha?

Q. Yes.

A. Just as little as it is possible to do to get our business out of there.

Q. Does your business require you to do very much?

565 A. At the present time; yes; it requires us to do quite a little.

Q. Why?

A. For the reason that the Union Pacific does not provide the proper facilities to receive our freight on, from the Stock Yards Company—or there is not proper facilities provided anyway.

Q. Yes, there is not a sufficient number of tracks there? Is that the reason?

A. We had a track for delivery at the yard, put for our own exclusive use, and at that time we did but very little switching in South Omaha; we simply shoved everything out of track No. 4, moved to our Albright yards, and switched it there, and now, owing to the congestion of trains we put some portion of the cars on the same track with yours, owing to the fact that the Union Pacific has traded or sold the track that we were using, to the Stock Yards Company, and they have taken possession of it; and they have put us in with the Great Western on another track, and the Great Western business, and ours is handled on a track about half long enough to handle one of our business, just for one company.

Q. So at the present time you are having trouble owing to congestion had in handling your business?

A. Owing to the lack of track on which to handle it.

Q. Is there any room there to build another track?

A. Yes, there is room there to build other tracks.

Q. Right there where the track that you are now using is located?

A. Yes sir; it can be arranged to build other tracks right there.

566 Q. Do you think it can? A. I think it can, yes.

Q. How far are those four tracks apart that are used by the tenant lines?

A. About the usual distance; I could not say exactly.

Q. Where can you put another track down there just at the present time?

A. By moving the main tracks, present main tracks, east.

Q. By moving them east? Is there any room at N street to move the main tracks east? Is there any room east of the main track? A. At N. street?

Q. At "N" street or O street, under the viaduct there?

A. N street is where the cross over is, going in and out of the Stock Yards east.

Q. Just below N Street? A. I think there is.

Q. That would shove it out in the street, wouldn't it?

A. I think that street is decreed, a greater portion of it, I undersand belongs to the Union Pacific; I would not swear as to that.

Q. When you say there is room down there to build another track, that is on the assumption that you can build it out in what we call Railroad avenue, or that street that runs up and down across N street parallel with the U. P. tracks?

A. Yes sir.

Q. If they haven't any right to build in the street and do not own it, then there is not room to put any more tracks in, at the present time, is there?

567 A. No sir; and that is my evidence in that respect, from the information received from the Union Pacific people.

Mr. Kellogg: In what respect?

A. In regard to the room that they have there, you wanted to know.

Mr. Kellogg: Do they claim to own it?

A. Yes sir.

Q. Who claimed to own it? A. Union Pacific officials.

Q. Well, who? Who said that? A. Civil engineer.

Q. Mr. Schermerhorn?

A. No, I have not heard Mr. Schermerhorn say it.

Q. Who was it?

A. I could not name the gentleman's name now.

Q. I would like to know because we do not own the tracks, streets or anything else in there.

A. You do not? very well. I was so informed by the civil engineers office. It might have been some other street that he alluded to there, and I might have misunderstood him; that is the only street that I know of right there.

Q. Have you noticed that congestion increasing since your service from 1886 to 1891, at these points, or at that point in South Omaha?

A. There has been quite an increase noticed there.

Q. Has been quite an increase? A. Yes sir.

Q. How many trips do you make with that switch engine, a day?

A. Make four regular trips, four regular trips.

568 Q. You mean you make four round trips?

A. Four round trips, yes sir.

Q. That takes you to South Omaha four times and from South Omaha to Council Bluffs four times? A. Yes sir.

Q. Making eight uses for the east bound and west bound tracks? A. Four on each track, yes sir.

Q. Those are regular trips, are they?

A. Those are the regular trips, yes sir.

Q. Do you make any extra trips?

A. Occasionally we do, yes sir; these regular trips are made every day except Sunday; our usual trips Sunday are only two, that is during the night, sometimes but one on Sunday night. If it is in the night we use it four, make four regular round trips.

Q. Do you make that trip from Council Bluffs to South Omaha whether you have anything to pull from Council Bluffs west or not?

A. That has never come up yet, since I have had charge of the yard. We have always had something.

Q. You have had something to pull west? A. We have.

Q. Four times a day, every time? A. Yes sir.

Q. Does that pull usually go to Omaha or to South Omaha?

A. Both.

Q. You have something each day four times a day to pull from Council Bluffs to South Omaha? A. Yes sir.

569 Q. Day and night?

A. That is two trips in the day time and two at night, four trips in twenty four hours.

Q. Are there assigned crews to that run, or to those runs?

A. Yes sir.

Q. And you carry a caboosé?

A. Yes sir. Usually, not always.

Q. In delivering the five cars of stock to the Stock Yards,

in the examples that I cited or illustrations that I cited a moment ago, how would you protect your train while it is standing on the east bound track?

A. Flagman protects train from the rear.

Q. Any protection the other way?

A. The brakeman and fireman ride along with you when it crosses onto the west bound track.

Q. You have lately requested the Union Pacific, have you not, to join in with you in furnishing a flagman at that point, for the protection of your trains, owing to the increase in the switching you have been doing. A. I have not.

Q. You knew that that had been done, didn't you?

A. No sir.

Q. You had not heard of that?

A. No sir. If that has been done, I have not heard of it.

Q. If you have freight for delivery to industries on Union Pacific tracks at South Omaha, or Union Pacific team track, how do you handle that freight?

A. It would depend; if it came from Council Bluffs, we take it with switch engines.

570 Q. Take it if it came from the west?

A. If it came from the west, it would be set off at Albright, and we would take it to South Omaha with our switch engine, and deliver it to the Union Pacific on what is known as their short passing track in front of their passenger depot, the first track west of their west bound main line. It is considered those yards run north and south there, as we usually term it.

Q. Where you had freight for delivery in Omaha from the east, is part of that brought over by your regular freight train, or is it all brought over by switch engine?

A. All by the switch engine.

Q. In case of freight for South Omaha from the east, how is that delivered?

A. All taken by the switch engine from Council Bluffs to South Omaha.

Q. In case of live stock from the east, how is that delivered at South Omaha?

A. Everything from Council Bluffs to Omaha and South Omaha is handled with the switch engine. Our through west bound train does not switch or stop in any manner through the switch, as a rule, going through terminals.

Q. I mean if held up in passing over the main lines with a switch engine, by the block or signals?

A. Whenever I have through trains, I have at times, yes sir; hauled through trains closer between the blocks.

Q. Where you bring a car of freight from Council Bluffs

for delivery to the 20th street Union Pacific track, what track did you come over?

571 A. What track did we come over?

Q. Yes sir; west of the west approach to the bridge?

A. The west bound main line, freight main line.

Q. Freight main line? A. Yes sir.

Q. Do you know whether that is the same track that the Union Pacific would use in switching from 6th street to 20th?

A. No sir; it is not.

Q. What track would the Union Pacific use?

A. Unless they were coming from Council Bluffs, they might use the same track; but they do not use the same track.

Q. They do not? A. No sir.

Q. They have an inside track?

A. Yes sir; they do not east of the point about east 10th street—11th street, I believe. The switch is located under the 11th street viaduct; I think it runs very little east of the 11th street viaduct. There they would come onto the same track that the Rock Island would use in coming to the 20th street.

Q. You say that you have never heard the Rock Island make any claim that it had a right to run upon any of the side tracks or spurs of the Union Pacific? A. In Omaha?

Q. Yes. You have never heard that claim made?

A. No sir.

Q. You have never heard of their attempting any such thing, have you? A. No sir.

572 Q. And you never heard until the attempt of May 3rd, that they claimed any right to run over that connection to any other road, did you?

A. A short time before that.

Q. A short time before that?

A. I believe it was on the 22nd day of April, if I remember right, I received instructions to make interchange between the Great Western and the Rock Island.

Q. Direct? A. Direct.

Q. That was in the shape of an order, wasn't it?

A. Yes sir; message instructions.

Q. When was that order put out?

A. April 22nd, if I remember right.

Q. When did you try to do it?

A. I can give you the exact date. I had the message in my pocket, I believe, same message that was sent to Ware and Churchill, Utt and Mr. Cable.

Q. What is the date of it? A. April 22nd.

Q. What date did you make the attempt?

A. I made the attempt May 3rd.

Q. Why didn't you make it before that, after you got the order?

A. We didn't have anything to make interchange with prior to that.

Q. May 3rd, then was the first time you did?

A. Yes sir; after receiving instructions, I made arrangements immediately upon receiving instructions, to interchange our business in that way, and on the 22nd of April, the
573 Great Western attempted to make a delivery to us at Albright.

Q. That was prevented?

A. That was prevented, and on May 3rd I received orders to deliver an empty car to be loaded at the independent elevator.

Q. From what official did you receive that instruction?

A. C. L. Brown, Superintendent of the Nebraska Division.

Q. Where is he located? A. Fairbury, Nebraska.

Q. Did you have any conversation with any of the Rock Island officials prior to the time you received this order?

A. No sir.

Q. Is that the first order that you had ever received to that effect? A. Yes sir.

Q. What preparation did you make to accomplish the commands?

A. I arranged with the Great Western people to furnish them switch keys to handle our switches, and time card.

Q. When did you do that?

A. Immediately after receiving instructions.

Q. And did the Great Western furnish you with switch keys, time cards and so on, with reference to their connections?

A. No sir; they haven't any time table, I believe, on their grain terminals, and no switches are supposed to be locked. Switch tenders are located at the switches.

Q. Did you have any conversation with the Great Western officials or employes as to how it was to be accomplished?

A. Yes sir.

Q. Whom did you have that conversation with?

A. With their agent and yardmaster.

574 Q. What are their names?

A. The yardmasters name is Johnson. I cannot recall the agent's name at the present time.

Q. When did you have that conversation with reference to receiving the telegram from Brown?

A. The same day or the following day we made the arrangements, during those two days, the day I received the message and the following day.

Q. I thought you said you had had some conversation before you received the message?

A. No conversation before I received the message, whatever;

I knew nothing about it at all. Before the deliveries were made was the question you asked me, as I understood it, deliveries.

Q. Didn't you notify the Union Pacific officials that you were about to make this attempt?

A. I did not. The Superintendent notified the Union Pacific officials; this same message, a copy went to Mr. Ware.

Q. Did you know that at the time?

A. Yes sir; my message so states.

Q. And you were not ordered to notify the Union Pacific officials?

A. No sir; they had notice; it was not necessary for them to have a second.

Q. All the cars I notice on this track that you have so much trouble with in South Omaha, now, are the cars that you shove in on that track, or that the Stock Yards shove in on that track?

A. I don't understand what track you are talking
575 about?

Q. The track you use jointly with the Great Western.

A. That we receive Stock Yards Company on?

Q. Is that what you say? Is that what you refer to, cars from the stock yards?

A. If that is the track you allude to, yes sir.

Q. Do you deliver cars on that track yourself, for any purpose?

A. Our stock for the Stock Yards Company is delivered on the track from the west.

Q. The stock from the west is put on that track?

A. It is, at the present time.

Q. How long has that been the custom?

A. It has been the custom ever since we have been running in there, as far as I know; ever since I have been in charge of the work, at least.

Q. How do you deliver stock from the east?

A. We deliver stock from the east on the Stock Yard Company's track.

Q. On the Stock Yard Company track?

A. On their lead, is usually received, known as the middle lead, I believe in the Stock Yard Company yards.

Q. Does the taking possession of the track by the Stock Yards that you refer to increase the facilities of the Stock Yards for handling the business with the tenant roads?

A. With the tenant roads?

Q. Yes.

A. Well, I cannot say as it does with the tenant roads; it certainly increases their facilities, giving them that much more room to handle their business on.

Q. But not necessarily the business with the tenant
576 roads?

A. No, sir.

Q. And it decreases the facilities of the Union Pacific at that point?

A. Certainly does, yes; or the facilities of the tenant lines.

Re-direct Examination,

By Mr. Kellogg:

Q. You were asked some question about control of trains; under whose orders are all of your train movements on the Union Pacific tracks?

A. Train movements are under the orders of the Union Pacific.

Q. All movements of trains, engines or otherwise, state whether they are or are not operated under the direction and control of the Union Pacific officials?

A. They are, yes.

Q. Can you go onto their tracks anywhere, without receiving directions or signals from them? A. No sir.

Q. When you are on their tracks, you are under their order?

A. Yes sir.

Q. Completely? A. Certainly.

Mr. Kellogg: That is all.

Questions by Mr. Rich:

Q. You can enter upon those tracks, however, at any time that the tracks are not blocked, can't you? A. No sir.

Q. You have no regular times for running your trains over the tracks, have you?

577 A. Not for our switch engines. We have our regular trains.

Q. You can enter at any time?

A. No, we cannot enter at any time, for the reason——

Q. At any time the track is not blocked?

A. That is I do not know that that is the case. There are times we cannot enter; all passenger trains take precedence.

Questions by Mr. Kellogg:

Q. You enter when they will let you?

A. We enter when they allow us; when they tell us that we can go, we go.

Q. I did not understand one question that was asked you here. You said in taking the cars into 20th street from the east you passed over the main tracks up to 20th street; that the Union Pacific in switching into the 6th street yard used the same track west of 10th street?

A. West of 10th street; they would have to come out on the same track that we would use at 11th street, and that switch is just a little bit east of the 11th street viaduct.

Q. And from 11th street to 20th street they use the same track you do?

A. If they went up the same track, they use the same track we do.

Q. How do they do?

A. Well, they do most any way; they have three different ways they can go, up the main track, on what is known as their main freight track, either 20th street or up to their 20th street yard. That is, of course, according to the directions that they have from the yard master or officials, how they go.

Q. If the 20th street yard is not blocked?

578 A. Yes sir; of course, if they are blocked, they couldn't go that way.

Q. Do you know whether they actually do run switch engines up the main track to 20th street and back in same as you do?

A. I have seen them go all three ways that I have just mentioned.

Questions by Mr. Rich:

Q. Then the Union Pacific has three ways or two ways of going up to 20th street from 6th that the Rock Island has not?

A. Two ways they have.

Q. Two ways that the Rock Island has not?

A. They three and we have but one.

Questions by Mr. Kellogg:

Q. Any one of their ways, they have to cross main tracks?

A. Yes sir. Any one of their ways they have to cross the main tracks at about 13th street.

Witness excused.

579 F. O. Melcher, called as a witness on the part of the plaintiff, being first duly sworn, testified as follows:

Direct Examination,

By Mr. Kellogg:

Q. What is your position with the Rock Island railroad?

A. I am General Manager.

Q. How long have you been general manager?

A. Since June, 1905.

Q. How long have you been connected with the Rock Island road?

A. Since February, 1903.

Q. In what capacity prior to General Manager?

A. As Superintendent and General Superintendent.

Q. How long have you been in the railroad business?

A. Nineteen years.

Q. Western roads?

A. Only with the Rock Island; the rest with eastern roads.

Q. What eastern lines?

A. The Fitchburg & Boston & Maine.

Q. In handling grain by your line to the Great Western line, if the connection should be made according to the plan of this map, state how it would be done?

A. State how it should be done?

Q. State how it would be done?

A. The quickest way to make the delivery would be to assemble the grain for the track or roads and make the direct delivery to the Great Western.

Q. At what point?

580 A. Moving through this proposed connection.

Q. At G. street? A. At G street.

Q. Did you hear the testimony of witnesses describing how the grain would be handled if delivered to the Union Pacific at the present time?

A. Yes sir.

Q. In substance that testimony was, that the grain would be brought by the Rock Island down and backed into the east end of the 6th street yards of the Union Pacific, taken through or from those yards to the Great Western 20th street yards and by the Great Western in the 20th street yards to the grain terminal, was it not? A. Yes sir.

Q. State whether that would or would not use the Union Pacific tracks more and congest them more than if the Rock Island handled the grain the manner as you have described?

A. It would congest it more.

Q. Is there any reason in operation why the Rock Island cannot deliver that grain direct into the Great Western as expeditiously, and using the Union Pacific tracks as little, and creating as little congestion, as to have the Union Pacific do it themselves?

A. There is absolutely no reason from an operating standpoint.

Q. Is there any reason why you cannot deliver the grain coming from the east into the grain terminals direct, with as little congestion to the Union Pacific tracks, as to have the Union Pacific do it.

A. Absolutely no reason from an operating standpoint.

581 Q. Which is the most convenient and least expensive and produces the least delay?

A. To make the direct delivery.

Q. By your company? A. Yes sir.

Q. Does that apply to all other companies, tenant lines reaching Council Bluffs?

A. I do not know their conditions as well as I know ours,

but as a general proposition, I should think it would be true of the other companies.

Q. Does that apply to the other companies reaching South Omaha? A. The same answer; yes sir.

Q. You have heard the testimony describing substantially the number of trains and the amount of business on the main and passing tracks of the Union Pacific Railroad from Council Bluffs to South Omaha which were used by the tenant companies, have you not? A. Yes sir.

Q. State in your opinion, whether the tracks between Council Bluffs and South Omaha are used to their full capacity, and if not, whether they are anywhere near their full capacity, giving your opinion as far as you can?

A. In my opinion, the tracks are not used to their full capacity. There are certain times of the day that the demands of the traffic may cause a slower movement, and this interruption of service I judge principally comes in from this running of trains, the morning passenger trains and morning deliveries, that are being made; but there are certainly
582 plenty of opportunities during the day to move more trains than are being moved at the present time.

Q. Are you acquainted more or less with the trains that are moved over double tracks, terminals and main lines in other cities and states in the United States?

A. I have observed and had experience with a good many similar cases to this.

Q. Is it an uncommon thing for trains on the eastern lines to be scheduled one minute apart?

A. Not uncommon.

Q. Do you know of lines that do have them?

A. I think all of the roads handling large passenger traffic, have trains scheduled closer than that; that is counting the passenger movements, the back-ups, and all the engine movements that are essential to handling the business.

Q. The bringing of grain in the grain terminals down to 6th street would delay it and tend to more congestion at 6th street, would it not?

A. In my opinion it would.

Q. Whatever congestion there is there at times of day, state whether or not that is because of any lack of main and passing tracks?

A. I have been—of course, I am not as conversant with Omaha perhaps, as the witnesses who have testified, but it seems to me essential that there must be plenty of room enough to accommodate such a means of operation, and if such a means of operation is to be adopted, there must be plenty of room to switch these yards clear of the main tracks, and other train movements.

583 There also must be proper arrangements by which the traffic can be crossed under protection in the shortest possible time.

Cross Examination,

By Mr. Rich:

Q. Have you or your road made any complaints of delays in the operation of your trains between Council Bluffs and South Omaha?

A. I think the Superintendent has regularly taken up such delays as these passenger trains meet with—I presume that all passenger trains meet with, the crowded condition morning and evening.

Q. You have not made complaints then? A. Yes sir.

Q. Of the congestion of the tracks and movement of the trains? A. At specified times, yes.

Q. You would not want to convey the impression to Judge Munger who will examine this testimony, would you, that it is possible to run trains over the bridge division of the Union Pacific, for instance from Council Bluffs to South Omaha, under existing conditions, one minute apart?

Q. I do not say that.

Q. I say you would not want to convey that impression, would you?

A. Not for twenty-four hours in the day.

Q. Then you do not mean to convey the impression, do you, that railroads, the roads in the east that have a very large traffic, run their trains at a minute apart, if there is any switching done on those tracks over which those trains run during that minute, do you?

584 A. No sir, certainly not.

Q. Are you somewhat familiar with the tracks between Council Bluffs and South Omaha? A. Yes sir.

Q. You have examined the tracks and been over them, examined the various connections, have you? A. Yes sir.

Q. In moving a car or cars with your switch engine from your regular tracks to the connection with the proposed 1700 ft. track at G street, if you had the right to do that, would you move east over the east bound main line to G street, South Omaha? A. Yes sir.

Q. Then you would have to leave the east bound main line and cross to the west bound main line, and cross the west bound main line, wouldn't you? A. Yes sir.

Q. And then enter upon the track, the 1700 ft. track, or its connection? A. It could not be done any other way.

Q. It could not be done any other way? Do you know what the grade is at that point?

A. I think—isn't that—I think that is west of the street; I am not sure.

Q. It is west of the street?

A. It is somewhere in the neighborhood of sixty feet to the mile. I do not know what the grade is to my knowledge.

Q. A little less than sixty feet? A. Yes.

585 Q. If the switch engine came out the same way it went in, then it would have to cross the west bound main line, then cross over to the east bound, crossing the west bound main line, and then use the east bound main line back to that connection near Q street, South Omaha?

A. If the engine was returning, yes sir.

Q. If the engine was returning? If it went on east it would go through the grain terminals to the connection with the west bound main line near 20th street, and use that west bound main line from there to Council Bluffs, if it went to Council Bluffs?

A. It would cross over to the east bound main line, without going over the east bound track.

Q. Or the east bound main line, I should say? A. Yes sir.

Q. In doing that it would cross the west bound track at 20th street, so in that movement it would cross the west bound main track twice? A. Yes sir.

Q. In whatever direction it went? A. Yes sir.

Q. And it would use the east bound main line from Albright up to G Street? A. Yes sir.

Q. And if it went on to Council Bluffs, use the east bound main line from 20th street to Council Bluffs? In saying that that movement would congest the tracks less and cause less trouble than if your train would run straight through from Albright on the east bound main line to 6th street, and there deliver the car, and then have it taken by the Union

586 Pacific switch engine, did you assume that the Union Pacific switch engine in delivering that car would run over the west bound main line from 6th street to 20th street?

A. It could not get to the connection with the Chicago Great Western if the Union Pacific runs its switch engines against the traffic, or crossed it over to other tracks; whatever method of doing this, it certainly has got to get over there somehow.

Q. The trouble is on the main lines, isn't it, in the movement of these trains?

A. Some of the trouble is on the main line and I think more is in the yards and with the switching, with the cross over movements.

Q. But the trains that are stopped and the interferences that are complained of are on the main line tracks? You haven't any right to run on any other track, have you?

A. I believe we have the use of the main and passing tracks.

Q. Are there any passing tracks between Omaha and South Omaha?

A. There are a whole lot of tracks; I do not know that they are devoted to that purpose or not.

Q. You do not know whether you use them or not?

A. We use them I guess, when we get a chance.

Q. You know whether you do use them at all or not?

A. I have not been on a train when it has taken the passing track.

Q. So far as you know, you only have a right to use, or only do use, the main track, east and west bound main line, between Council Bluffs and South Omaha?

A. I won't answer that question.

587 Q. Why not?

A. Because I do not think I can intelligently.

Q. Why can't you? A. Please state the question again.

Q. I say, does your road, or do your trains in passing from Council Bluffs to South Omaha, use only the east or west bound main line, or the passing tracks, if there are any? You do not use any side tracks or switches?

A. We go where the Union Pacific tells us to go in moving the traffic.

Q. So that the trouble you complain of occurs on the tracks that you use between Council Bluffs and South Omaha, and not on other tracks?

A. I do not think that follows or is clear. The most of the trouble we have complained of is because of the congestion in unloading passenger trains at Union Depot. We have had a number of complaints in the matter of unloading their traffic between those points.

Q. On passenger traffic?

A. After a passenger train once gets away, it generally goes through.

Q. Well, do you know that?

A. It has been my experience.

Q. Well, then, the complaints that you have seen of it, have been with reference to movements at the Union Station, have they?

A. We can produce the complaints if you want to see them.

Q. No, I am asking you about that as General Manager. Tell us.

A. I have not see any complaints, except I know
588 that we meet with the delays; that is taken up with the bridge officers who have charge of that part, same as we take up every delay, and they are a matter of record; if you want them, we can produce them.

Q. The delays you are complaining of are only on such tracks as you have a right to run on, under the contract?

A. I have not any special delays in mind, only a general knowledge that we have been delayed in getting in and out of the Union Depot. I know nothing of any other delays.

Q. You know nothing of any other delays? A. Yes.

Q. Don't you know of delays in South Omaha, and haven't you made complaint of them?

A. I have not had any; I have not made any complaints myself. What the local officers may have done is a matter of record.

Q. Have you made any suggestions to the Union Pacific yourself, with reference to obviating the congestion and delay at South Omaha in switching? A. I do not think so.

Q. Do you know that it has been done by your road?

A. I do not.

Q. Let us get back to the proposition, if you want to answer it fairly; if you do not, say so.

A. Well, now, I won't stand any imputation of that sort. You can put your question right and I will answer it.

Q. I have a right to ask you and have your answer.

A. You haven't a right to use any such language as that.

Q. I will ask you again.

A. If the court was on the bench I think he would say the same thing: You put your question and I will answer it.

589 Q. All the congestion that you have ever complained of has occurred on tracks on which the Rock Island had a right to run by the terms of its contract with the Union Pacific, and no other tracks? A. Where else could it occur?

Q. You are trying to evade the question.

A. I am not either.

Q. All right. Answer it yes or no, then. Is that the fact?

A. I do not know what was the cause—the original cause of congestion.

Q. I didn't ask you what the cause was. I asked you where the trouble was. I say now that the only complaint that you have ever made has been with reference to interruptions to your trains on tracks on which you had a right to run by the terms of the contract?

A. I think that is a straight case of answering yes, because it don't mean anything except that the trains that are doing that anywhere, are simply on the tracks on which they run.

Q. All right. Now, we will get back to the proposition. It took you a long time to say it.

Mr. Kellogg: I think it is just as well that you treat this witness gentlemanly.

Mr. Rich: I have tried to for a long time. Now, I have a right to an answer and I am going to have it.

Mr. Kellogg: I don't think your efforts have hurt you.

A. You do not look pained, I don't know how you feel. You

don't put intelligent questions; that's the trouble with you.

590 Q. Perhaps that may be true. I am not an operating man and perhaps I may not understand it right.

A. I am not a lawyer.

Q. Your witnesses seem to have been able to understand, and you are not able to. A. (No answer).

Q. Now, then, if the delays that you complain of were on the track over which you had a right to run, you know that those tracks are the main tracks, and the passing tracks between Omaha and South Omaha, don't you?

A. Yes if; you preface your question with an if and I say, "if" yes.

Q. You do not know of any other tracks that you have a right to run over, do you?

A. I cannot answer that question; I do not know whether I have a right or not.

Q. Did you ever read the contract? A. Yes sir.

Q. But you do not know what your rights are?

A. I cannot interpret that contract. Of course, I believe we have.

Q. And that is all? You believe you have a right to run over other tracks?

A. That is my present notion, that is all.

Q. You have never tried to do that, though have you?

A. No sir.

Q. Since that contract was in existence?

A. I never had occasion to.

Q. Now, then, if your trains are interfered with in their operation, and you complained of that, it is because the
591 tracks over which you have a right to run are filled with other trains, or your trains are interfered with by reason of movements or obstructions on these same tracks that you run on?

A. Yes. Of course, the causes of the movement or obstruction may be necessary, or they may be unnecessary, due to inefficient administration of the tracks.

Q. Certainly, I am not talking about that.

A. Well, I am.

Q. The folks may not know how to run that road and it may be for that reason. Now, you heard these witnesses testify, didn't you, that the Union Pacific had two other tracks than the main tracks, on which it could haul freight cars from 6th street to 20th street?

A. I do not remember that; that is a matter of record.

Q. Mr. Wright testified to that.

A. I was here and I probably heard it; I do not remember it.

Q. When a freight train runs onto the east bound main line at South Omaha, if its progress is not impeded in any way, or there is no obstruction, has it any right to stop between South Omaha and the west approach to the bridge?

A. Why yes.

Q. Or is it supposed to continue its course?

A. I should say it had a right to stop if it was necessary for it to stop.

Q. If it was necessary to stop? Does it stop to switch or make deliveries of cars at any other points on the line?

A. It may.

Q. Do you know of any?

592 A. The testimony of Mr. Wright is about all I can rely on, because I have not followed the switching operations in Omaha. I think he covered that fully and any information that I know would come from Mr. Wright or from the local men.

Q. Did you hear the testimony of the Union Pacific witnesses with reference to the manner of switching and handling cars of the tenant roads? A. I heard a portion of it.

Q. Now, your opinion is that if a Rock Island freight train should enter upon the east bound track at South Omaha, and run straight through to 6th street, and there set out a car to the Union Pacific, and the Union Pacific then take the car and run on an inside track and not on a main track, at and near 20th street, and there cross the track once, and set that car into the Great Western, that that would be a greater interference with travel over the two main lines, than to have your switch engine run on the east bound track up to the switch at G street and stop, and then cross over to the west bound track, and then enter upon the track to the elevators, and then after delivering the car there, go out upon the west bound track again, and from there to Albright, or through the terminal track to 20th street, and there cross the east bound track and go onto the west bound track—cross the west bound track and go onto the east bound track, and occupy that to the west approach to the bridge; you say that there would be less confusion by that movement in delivering a car to 6th street and having the Union Pacific switch engine take it at that point?

A. If I understand your question, you want to know 593 if there would be less occupation, therefore congestion and use of the main track, by the Union Pacific making the delivery in the prescribed and customary manner, than the Rock Island making a direct delivery as I describe. I will say yes.

Q. No, I did not say that. I ask you whether there would be more confusion in the manner suggested in my question,

Q. Your question was so involved that I must confess that I did not quite follow it through. I think I know what you mean.

Q. It is simple enough.

A. I mean to suggest the better way is the more direct way for the Rock Island delivering its car to the Great Western in that case.

Q. Notwithstanding the fact that your switch engine would interfere with the main lines more and cross them oftener in doing that, than by having the Union Pacific do it, you still say there would be less interference?

A. That car has got to cross the main line just as many runs in one case as it has in another; it don't make any difference who handles it; in one case one engine would handle it on a direct delivery; in the other case it would take three engines. In one case it would run something like six miles and a quarter; in the other case it would run a mile and a quarter on the main track. If you take that away from the main track and put it on passing tracks or on auxiliary tracks, it would lessen the use of the main tracks so much; that is very plain; no question about that.

Q. In answering the question again the way you do 594 in favor of the Rock Island, or in favor of the direct delivery, as you have stated, you then assume that there are just as many interferences with the two main tracks in the one case as in the other?

A. I say there are more in the case of delivery by the Union Pacific.

Q. Which is the more interference, in running across a track and stopping your train, and blocking the track for that reason; or running directly through and over that track to a given point?

A. Of course, if you go across the track you obstruct it; if you don't go across it you do not; it all depends upon the way the car is handled. I do not see how the car could avoid crossing the main tracks. If it crossed it up there at G street instead of down at 6th street, why that is only a question whether it could better be handled at G street than at 6th street; the car has got to go across the main track, somebody has got to take it across. Of course, you know that as well as I do.

Q. Across the west bound main line?

A. Across the west bound main line.

Q. Isn't it a fact that if the Union Pacific does it, and uses an inside track up to 20th street, that the east bound main line is freed entirely for that distance while it is doing that, and that the testimony shows it only crosses the west bound main line once at 20th street?

A. Crossed it once any way; the car don't cross the west bound main line but once. On the other hand the way the Union Pacific are handling it, it leaves the east bound
595 main line and goes into the yard and then comes out again and obstructs both the east bound and west bound main line again.

Q. In case of delivery made by the Rock Island as you suggest, would the Rock Island cross the west bound main line and go in onto a single track? A. Single track?

Q. If it comes through the yard and then was going to Council Bluffs, it would again cross the east bound main line or the west bound main line at 20th street to go out?

A. It may, or it may go from that back again on the west bound track, and then again obstruct the west bound main line, or you would make obstruction of the east bound main line except in the normal operation of traffic.

Q. Isn't it a fact that you have to pull out and hold?

A. On an empty or light engine movement? Whatever it is, in that case it would be a different problem.

Q. How often have you visited the tracks and observed the condition of traffic between Omaha and South Omaha?

A. Well, I have been over the—I suppose I have been up here at least once in two weeks, or once in three weeks.

Q. And under the conditions as existing in Omaha or between Council Bluffs and Omaha, and the various customs prevailing as you have heard them testified to, with reference to the movement of trains, what would be the limit of a single track?

A. That is a very difficult question to answer; I do not think I could say what the limit of a single track would be; it depends altogether upon the purpose for which the single track is used, whether used to either switch on it, or whether it was interrupted by other crossings.

596 Q. I say under the conditions as now existing from Council Bluffs to South Omaha?

A. Well, that question would depend upon the skill with which the matter was operated. I do not think I can answer that question intelligently. I might make a rash guess at it.

Q. And you answer the same now with reference to double track between Council Bluffs and South Omaha, under existing conditions?

A. I should think—well, I should not care to say in that respect, because the conditions vary so considerably, as I understand it, from time to time, depending upon the business offered.

Q. Have you asked for additional facilities at South Omaha?

A. We are conferring with Mr. Mohler in regard to the matter. I understood in our conversation at Chicago that he was

going to restore the track which is turned over to the Stock Yards, and Mr. Mohler indicates his intention of making some arrangement which would improve the conditions at that point. I think that is the only time to my knowledge, that anything bordering on a request for additional facilities, was made.

Re-direct Examination,

By Mr. Kellogg:

Q. You stated that your recollection of complaints were mostly as to passenger trains leaving the Union Station?

A. Yes sir.

Q. Have you in mind the cause of the delays?

A. I believe it is on account of the bunching of a great many trains at the passenger station at certain prescribed
597 hours in the morning. There is not provided room enough under the switching operations which are conducted there; transfer of cars from one to the other must be so conducted as to make traffic stop while the switching is going on.

Q. State whether or not it is a fact whether a train switched into the east end of the 6th street yard runs out onto the main tracks on the bridge? A. Yes sir.

Q. Do you believe that the delays to your passenger trains are caused by any wants in number of tracks across the bridge, or of the main and passing tracks?

A. I should say it was the lack of proper arrangement of passenger facilities.

Q. Switching facilities in the yard? A. Yes sir.

Q. Have you in mind (I don't suppose you would carry that in mind) any complaints as to the handling of your traffic on the other parts of the line—whether you have in mind or not?

A. You mean where our traffic is handled?

Q. Yes, freight traffic—of delays of freight.

A. At other parts of the line?

Q. Yes. A. Yes sir.

Q. I think you said you hadn't any recollection of any complaint as to handling of freight traffic on other parts of the line?

A. In Omaha, do you mean?

Q. Yes. A. No.

598 Q. That is what I mean; in Omaha I refer to. Do you wish to make any further explanation as to the number of trains or anything to be handled?

A. It would seem to me, by experience actually on the different railroad trains which goes to suggest it, under our conditions it seems to me that the business in Omaha you could expect reasonably twenty trains movements an hour, and in twenty four hours that would be four hundred and eighty and I do not question that due to the present arrangement

of tracks, and to the method which I believe it is necessary to pursue in doing business between 11th and 16th streets, there certainly is a big obstruction to the main track; but from 16th street to South Omaha, there appears to be room for three times as many trains perhaps, as they run; that is in my judgment. I believe that my previous experience justifies that statement; and the point I tried to make was, in the handling of this traffic, that the more you keep trains out of the congested area, the less obstruction there is to the whole proposition. If I have not made that clear, then I do not know how to use the English language.

Q. Your idea is, with this business delivered direct to grain terminal, it would keep trains out of there and so it would lessen that congestion?

A. Yes sir. The thing we are working for all the time everywhere, is to make the train men cut the cars up to destination, and to be carried to destinations with the fewest possible engine and train movements. When the train is put away, the job is done. And I have thought that the reason possibly, that it

was not permitted here, was just as Mr. Mohler expressed
599 —the Union Pacific wanted to protect its switching revenue. I believe that I can say, unofficially, without going into the record, that if Mr. Mohler was operating this entire property, he would do just exactly the thing I recommend doing.

Re-Cross Examination,

By Mr. Rich:

Q. What causes all those trains to bunch at some particular time? A. In the Union station?

Q. Yes sir.

A. I should say it was the desire of the passenger department to leave for Chicago at the same hour and go out at the same hour.

Q. Of all the roads? A. Yes sir.

Q. Then your road has something to do, in the time it gets in here and leaves here,—has something to do with that congestion?

A. We contribute to the congestion, no question about that.

Q. That is owing to the competition between the various passenger departments?

A. It may, and it may be due to the fact that the Union station has not kept up with the demand for the service.

Q. You say just east of the passenger station there is no trouble about the movements of the trains, but you think over the bridge you could move twenty trains per hour, reasonably, do you?

600 A. Under normal conditions. Of course, at the present time the bridge is undergoing repairs and we are restricted, I believe, to a speed of six miles per hour.

Q. I mean under normal conditions.

A. I should say so, yes sir.

Q. Then you say, just west of 16th street, as I recall your answer, three times as many trains could be moved?

A. Well, what I said was this—I think the answer can be read from the testimony, that between 11th and 16th street there seemed to be a pretty big bunch of train movements, and that west of 16th street there seemed to be room for three times as many trains.

Q. The trouble is between 6th street and 16th street, the congestion?

A. Well, I have the table here; of course, all I know about this thing is this statement which I assume is correct; I have not got into the trains myself; I simply take this statement, and this statement shows between 11th and 16th street—(interrupted).

Q. It shows that congestion?

A. It shows that density, we will call it.

Q. But you are also complaining about trouble in the passenger station or on the tracks adjacent to the passenger station? A. Made no complaint.

Q. But you say you are having trouble with the trains in there, and they are not being moved promptly?

A. They are yes; we recognize the necessity for that and want to remedy it.

Q. There is a necessity at the present time for that, is there, that you think you have discovered?

601 A. I do not think I have discovered it; I think everybody knows the difficulty in the Union station at Omaha.

Q. That has been taken up and heard by the representatives of the various roads, and discussed?

A. It is in the hands of the board of managers now.

Q. With a view to remedying it? A. Yes sir.

Q. With reference to your freight trains that run into Chicago, it is a fact is it not, that they run into the city and then the train is broken up, and the cars are delivered by switch engine to industrials, perhaps, back on the track that the train has passed in entering?

A. No sir; that is not so. The freight trains terminate at the outside yard, sixteen miles from the LaSalle street station at yard called upper end; there the cuts of cars are made in such manner as can best facilitate the delivery.

Q. And they are delivered there with a switch engine?

A. The train movement with the switch engine originates at upper end.

Mr. Kellogg: That is all.

Witness excused.

602 A. L. Mohler, being recalled as a witness was questioned by Mr. Kellogg as follows:

Q. I understand that it is the intention of the Union Pacific Company to construct the proposed connection from the Great Western terminals to about G street as shown on this map, substantially?

A. I do not know anything about that map, but I know about the decree and the plat which was agreed upon by the Chief Engineer of the Great Western and our own companies, that is to be constructed.

Q. Whatever that plat is, that line you propose to construct?

A. Certainly, certainly; and the reason for the delay has been our inability to get the switches manufactured; the delay is not with us.

Q. I understand that. I want to make clear that that connection is to be constructed, and that there is no idea of abandoning it?

A. No, because this connection between ourselves and the Great Western we have got an interest in having constructed.

Mr. Kellogg: That is all.

Witness excused.

603 W. J. C. Kenyon, called as a witness upon the part of the plaintiff, being first duly sworn, testified as follows?

Direct Examination,

By Mr. Kellogg:

Q. Give me your full name and occupation.

A. William J. C. Kenyon; General Manager of the Union Stock Yards Company of Omaha.

Q. What railroad experience have you had? Will you state your railroad experience prior to your going into the Stock Yards Company?

A. I have been with the Stock Yards Company something more than nine years. Prior to that time I was engaged with the C. B. & Q. system and also for two years with the Atchison, Topeka and Santa Fe.

Q. You were General Passenger Agent of one of the Chicago lines, were you not?

A. I was General Passenger Agent and General Freight Agent of the Chicago, Burlington and Northern for a number

of years. I went there during the time of the construction at first.

Q. You are president of the Union Stock Yards Company?

A. General manager.

Q. And have been for nine years? A. Yes sir.

Q. About how many miles of track have you got in South Omaha? A. We have about thirty-two miles.

Q. You may state whether during the time you have been there, or not, the Union Stock Yards has acted as an intermediary for switching between connecting lines?

604 A. We have, during the time that I have been there and prior to that time.

Q. Has the Union Stock Yards Railway switched cars between these tenant lines and the Union Pacific?

A. Very few cars between the tenant lines and the Union Pacific proper, but a large number between the tenant lines of the Union Pacific and other tenant lines.

Q. That is what I meant. Between say, the Rock Island and the Northwestern, and the Milwaukee and the Great Western, and other lines reaching South Omaha, have you interchanged cars between those lines? A. We have.

Q. Under a tariff? A. Yes sir.

Q. Has that tariff been in existence for a number of years?

A. Since the 1st of May, 1896.

Q. Do you know whether that was put in by virtue of an arrangement with the Union Pacific?

A. It is a memorandum of an agreement.

Q. Signed by the Union Pacific? A. Yes sir.

Q. Now, Mr. Mohler, I think it was, suggested that it was sharp practice?

A. I heard him make that statement, but I do not think he meant it in that sense.

Q. Has it been open and notorious?

A. It has been open while not notorious.

Q. Well, I mean by that, known by all the railway companies? A. Yes sir.

605 Q. Under the tariff put in by virtue of an agreement with the Union Pacific, wasn't it?

A. Well, I think the tariff will state for itself, if you have a copy of it.

Q. I mean the agreement you referred to a few moments ago.

A. We have been switching under a tariff, and received a compensation under that tariff, including all those movements from time to time.

Q. But I refer to that memorandum of agreement which you said was made with the Union Pacific and other lines, which provided for that tariff. A. Yes, sir.

Q. Have you got that agreement with you?

Mr. Rich: I have it here (producing paper).

A. This agreement was signed by Mr. Munroe, the Freight Traffic Manager, and it was effective on May 1st, 1896, and under the eighth paragraph it reads: "Loaded cars switched from transfer track of one railroad direct to transfer track of another; switching charge to be one dollar per car, empty car returned free".

Q. Well, now, what conditions can that apply to at South Omaha?

A. Well, so far as the Stock Yards Company is concerned, it would apply to all lines doing business in South Omaha.

Q. The Rock Island, the Great Western, the Burlington, the Missouri Pacific, and the Milwaukee, wouldn't it?

A. All of them.

Q. And the Northwestern?

A. All of them; yes sir.

606 Q. Do you actually know how many cars have been switched under that tariff, interchanged between these railroads, during the last six months, or a year, or any period?

A. From the 1st of July, 1906, to May 31st, 1906, inclusive, there were 1361 cars switched in that manner.

Q. Can you give the railroads between which they were switched and interchanged? A. Yes sir.

Q. Will you do so, please?

A. The Chicago, Great Western delivered through our terminals, to the C. B. & Q. 143 cars. They also delivered to the Northwestern 1 car, and to the Illinois Central 160 cars, to the Missouri Pacific 418 cars. And I find that the Great Western delivered through our terminals to the Union Pacific 1 car; being a total of 723 cars. The C. M. & St. P. delivered through us to the C. B. & Q. 5 cars; and the C. R. I. & P. delivered to the C. B. & Q. 11 cars. The C. B. & Q. delivered through our terminals to the Chicago Great Western 144 cars and to the Chicago & Northwestern 1 car, and to the C. R. I. & P. 36 cars, making a total of 181 cars. The Fremont, Elkhorn and Missouri Valley Railroad delivered to the Chicago Great Western 307 cars, and to the Chicago & Northwestern 1 car; total 308. The Illinois Central delivered to the Chicago Great Western 2 cars, the Illinois Central to the C. R. I. & P. 8 cars, a total of 10 cars. The Missouri Pacific delivered to the Chicago Great Western 18 cars, and to the Northwestern 9 cars, and to the Chicago Milwaukee & St. Paul, 93 cars, and to the Chicago, Rock Island and Pacific 3 cars, a total of 123 cars. The grand total for that period was 1361 cars; consisting of 882 cars of grain, 113 cars of stock, and 366 cars of miscellaneous dead freight.

607 Q. Do you know whether like switching deliveries

between these various tenant roads have been made for years there, ever since you were there?

A. Well, to my personal knowledge, for the last nine years, and I found that practice when I came there.

Q. Has there been any attempt to cover it up and make it a sharp practice?

A. Not at all, we are wanting to do that kind of work.

Q. And intend to continue it? A. If we can.

Q. Doesn't it facilitate business to do it, for your company to do it?

A. Well, must facilitate it; otherwise these connecting lines would not deliver it to us for transfer to other lines.

Q. Well, doesn't it facilitate business much more than it would to haul it down and put it in the Union Pacific 20th or 6th street yards, and have them deliver it?

A. Some of these deliveries could not be made in that way.

Q. Yes, oh, yes, they could.

A. Oh, I don't know the destination of these cars.

Q. I know, but I ask you if it does not facilitate business more to exchange between these lines up there than it would through the 20th and 6th street yards of the Union Pacific?

A. Well, I would not answer that question.

Q. Well, I will withdraw the question if you do not care to answer it. Do you know the manner in which it is proposed to have the western lines deliver grain to the Great Western grain terminals?

A. I have examined that map and have a general idea.

608 Q. You were present at the time the arrangement was made for that direct connections, were you not?

A. I think I had something to do with making a suggestion that that kind of connection should be made.

Q. Between the Union Pacific and the Great Western?

A. Yes sir.

Q. You suggested that to either one or the other of the parties, didn't you?

A. I think I brought them together on that proposition.

Q. You may state whether it will lessen the business on the Union Pacific tracks and the congestion and the use of its tracks to make Rock Island delivery direct to the Great Western in the manner they propose, or to deliver it as the Union Pacific require, down through the 6th street yard?

A. I think it would facilitate the business if the delivery was made there at G. street in South Omaha as proposed, providing it came in train lots.

Q. Well, you mean providing they do not break it and switch on the main tracks? A. Yes sir.

Q. Suppose it comes, as witnesses testified, they propose

to bring it, switch it in by switch movement from the Rock Island direct?

A. Well, providing the movement was continuous and direct.

Q. I understand? A. Yes sir.

Cross Examination,

By Mr. Rich:

Q. Did you prepare a statement of interchange of 609 cars for any time prior to January 1st, 1906?

A. I did not.

Q. The interchange of cars in the manner shown by your statement prior to that time was not so great as it was after January 1st, 1906, was it?

A. With the exception of grain; our grain movement commenced on the 2nd of August, 1905, and I would assume that the grain movement in the latter part of 1905 was as great as during those five months.

Q. With other roads? A. Some character of transfer.

Q. Let me call your attention now to a peculiarity in this statement, and that is that out of the 1361 cars transferred, 1194 of them were for the Chicago Great Western. Examine the statement and see if that is correct. From the Chicago Great Western to other roads 723 cars; from the C. B. & Q. to the Chicago Great Western 144; from the F E & M V to the Chicago Great Western 307; from the Illinois Central to the Chicago Great Western 2; from the Missouri Pacific to the Chicago Great Western 18.

A. The principal amount of that of course, is grain.

Q. You may state whether or not the aggregate number of cars exchanged for the benefit of the Great Western out of the total of 1361 amounts to 1194 cars?

A. Yes sir; 1194 cars out of the 1361 were either from or to the Chicago Great Western road.

Q. That will be 167 cars that were exchanged by the Stock Yards between all other roads entering South Omaha or having connections with the Stock Yards tracks?

A. That would be the condition, yes sir.

610 Q. Do you know whether you were making these exchanges for the Chicago Great Western prior to January 1st?

A. I could not state without looking up the records?

Q. Will you do so afterwards and examine your records and make a statement of the exchanges of cars for the year 1905? A. I will be glad to do it, yes sir.

Q. And produce it here to go into the records?

A. How soon do you want that? Simply for the record?

Q. Yes, for the record.

A. It will take half a day to make up that memorandum statement.

Q. How long will it take to make it up?

A. About a day.

Q. Did you hear the testimony that these cars exchanged in this manner were delivered to the stock Yard upon the Stock Yard tracks of the various lines for whom these exchanges were made?

A. I do not understand the question, Mr. Rich.

Q. Paragraph eight provides: "Loaded cars switched from transfer track of one railroad direct to transfer track of another;" Have any of the 1361 cars as included in the statement just read to you been moved in the manner provided for in section 8? A. Yes.

Q. Are you sure of that?

A. If you will read the question again, please?

Q. Section 8 that says from the transfer track of one railroad to the transfer track of the other; when delivering cars, for example, to the Rock Island road upon the track
611 that was assigned to them by the Union Pacific, where would you get those cars?

A. They would be delivered to us by the connecting line.

Q. Yes sir; on your line.

A. Now, there has been a good deal of talk around where these deliveries are made in South Omaha on our track; we provide no transfer tracks for the tenant lines of the Union Pacific Railroad; the Union Pacific Railroad is supposed to furnish a sufficient amount of trackage for their tenants. I only know in a general way the contract, some 3000 feet; now I do not undersand that that is 3000 lineal feet but 3000 ft. of trackage. The Union Pacific has been congested for a long time at South Omaha, and I can state this of my own knowledge, they have been trying to increase their trackage facilities at that point, not to assist the Stock Yards particularly, but to assist the general situation, and at times they have permitted connecting lines to place upon certain of our tracks cars that they might bring in, but under no contract with them, or under no agreement with them; it has been a matter of mutual advantage to us. The time of switching down there at times is very short, and where any line can help the other one out, they do that, instead of standing pat upon the proposition and reaching up to the dead line in the moving; the delivery is made on designated tracks.

Q. But, Mr. Kenyon, has that accommodating spirit led to a custom? Isn't it a fact that any tenant road of the Union Pacific or any other line having connection in South Omaha, that has any cars to be transferred to another tenant line, delivers them upon the Stock Yards tracks?

612 A. No; and within the last sixty days we have—the Stock Yards Company, have taken a somewhat arbitrary stand in the matter of trackage in South Omaha, because we felt as long as we were complacent with the tenant lines of the Union Pacific and perhaps with the Union Pacific itself, they would crowd onto our facilities and our facilities would take the place of transfers as between the Union Pacific and tenant lines and the Stock Yards.

Q. Some half dozen or more witnesses have now been examined, witnesses for the Union Pacific and for the Great Western and their testimony is all unanimous to the effect that all cars having interchange between any of the lines connecting with your tracks are delivered to the Stock Yards upon the Stock Yards track and not upon the exchange track provided by the Union Pacific.

A. The line of demarkation at South Omaha at times is so faint that we handle business going over any line, but as a matter of fact the Stock Yards Company does not provide transfer track for connecting lines. Now the simple proposition is this: There are fourteen lines doing business at South Omaha, and if the Stock Yards Company provided transfer tracks there would be a receiving and forwarding track, making something like twenty-eight tracks. We have no such facilities as that.

Q. The testimony shows that all cars for delivery through the Stock Yards as a switching intermediary are delivered upon the Stock Yard track and that the Stock Yard engine then takes those cars, and if they are going to a tenant line of the Union

613 Pacific they are then by the Stock Yards placed upon one of those four tracks set aside for the tenant line; but that the delivery originally is made direct to the Stock Yards track for all of these railroads. Now I wondered if you were conversant with that or if you might be mistaken? That is the universal testimony.

A. I know, but where a practice grows up and exceptions are made to it on the spur of the moment to help out a congestion, people get the impression that tracks are used indiscriminately. Now, as a matter of fact deliveries are not made in that manner. If there is to be a transfer—and there is a difference between the 1361 cars and our ordinary business—I would call these 1361 cars as transit cars, especially on that grain. We are notified by the connecting lines to come and take those cars off the track where they leave them; that is not on the Stock Yards property; there aint any question about that.

Q. Then, Mr. Wright when he testified this afternoon to that fact was mistaken, wasn't he?

A. Well I think he testified to some extraordinary case. He did not mean to say that in all his traffic that he pushed in all of his cars onto our tracks and left them there.

Q. Well, that has been the universal testimony so far in this case. There is evidently a mistake somewhere.

A. There is a mistake somewhere, for the witness probably did not understand the question as propounded by the attorney, and the witnesses were not familiar with the operation, and were desirous of answering the question as they understood it.

Q. Does this statement you have furnished show the return of any empty cars?

614 A. No, these are all loaded cars.

Q. Well, did you return the empties when these were unloaded?

A. In the case of 882 cars of grain there were no empties returned because the grain is not loaded on our terminals. In case of some 113 cars of stock here, there's 93 cars are from the Missouri Pacific going to the C. M. & St. P.; those 93 cars came from Texas, and they came in to feed, and after resting and feeding, they went out over the C. M. & St. P. The empty cars were returned to the Missouri Pacific and empty C. M. & St. P. cars set in for the load.

Q. That is in that one instance?

A. Well, I happen to remember that one instance. Now, in the miscellaneous I cannot tell from the statement whether the 60 cars from the Great Western to the C. B. & Q., miscellaneous freight, what that consists of, whether it was a straight movement of a loaded car and the empty returned; I would think not.

Q. You would think from your statement that except in the instance you have already mentioned of the stock, that empties were not returned?

A. I would think so, yes sir. I know it to be the case in the 882 cars of grain.

Q. Let me call your attention to section 8 of the agreement exhibit 7 and ask you then what that clause was attached to that, "Empty cars returned free," and ask you further if section 8 did not as a matter of fact, have reference to switching cars to industries on Stock Yard tracks?

A. Well, in answer to the first part of the question, if there were no empty cars to be returned free, of course they would not be returned. In answer to the second part of the question,

615 we are doing a switching business down in South Omaha, the Stock Yards Company, and it does not wholly apply to the Stock Yards proper or packing house, or such industries as are located on the Stock Yards tracks. Now, prior to the time that the Union Pacific and the Burlington made an agreement for the joint use of tracks at South Omaha and had any railroad, all freight going to or coming from the Burlington road destined to Avery, a local point on the Union Pacific South of South Omaha, was handled by the Stock Yards Company.

Q. Under this 1896 agreement?

A. Yes sir; and that freight amounted to, on an average, about 1200 cars a year, the freight to Avery and to some other industries on the line of the Union Pacific in South Omaha; but under the agreement with the Burlington road, the Burlington has a right to switch into and out of any industry on the line of the Union Pacific from a certain point in South Omaha as far as Avery. That traffic amounted to, at a dollar a car, about twelve hundred dollars a year; but there was not any question raised by the Union Pacific or anybody else as to the right of the Stock Yards Company to do that business. Since that contract went into effect, the Burlington road has been doing that switching themselves; we do not do it any more.

Q. The Stock Yards Company has never done any switching for the Union Pacific in South Omaha where cars came from tenant lines or any other lines destined for industries on Union Pacific tracks in South Omaha, or the freight house, or team tracks, Union Pacific team tracks, has it?

616 A. I would assume that the Union Pacific would do their own switching; but they do switching for the Burlington road where they have an interest in the track, a joint track with us; and the Burlington road has found it cheaper from an operating point of view to have us do the switching for them.

Q. How did the Stock Yards Company originally come to do that switching from South Omaha and Avery over the Union Pacific direct?

A. Not over the Union Pacific direct, but the Union Pacific at that time did not reach the Burlington direct at South Omaha; the Stock Yards track was the intermediate track.

Q. Do you mean that the Stock Yards took the car from the Burlington and then hauled it clear to Avery?

A. No sir; we delivered it to the Union Pacific.

Q. Oh, delivered it to the Union Pacific? Yes, I misunderstood. A. Yes sir.

Q. How long have you been down there? A. Nine years.

Q. You were not there when this agreement was entered into?

A. No, I went there the 1st of July, 1897.

Q. Does this statement that you have prepared of the interchange of cars by the Stock Yards Company show the return of any empties in the case of grain delivered by any road to the Chicago Great Western, or delivered by the Chicago Great Western to any other road?

A. No, that statement only shows loaded cars.

A recess was taken until Thursday, June 21, 1906, at 9:30 A.M., after which time the following proceedings were had.

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June 21, 1906

The further taking of testimony was resumed, pursuant to adjournment, at 9:30 A. M.

Examination Wm. J. C. Kenyon, resumed.

Cross,

By Mr. Rich:

Q. Mr. Kenyon, you have not been able as yet to prepare the statement of the movement of cars switched by the Stock Yards for the year 1905?

A. I expect to be able to present that at the afternoon session.

Q. Mr. Kenyon, you may state the extent of the Stock Yards or ground owned by the Stock Yards upon which that company has tracks north and south as bounded by streets in South Omaha?

A. The northern terminus of the stock yards property is a point near the connection of the Missouri Pacific under the overhead crossing of the Burlington about D Street in South Omaha, and the Southern point is a point at the Southeast corner of the Swift property.

Q. That takes it a block south of Wyman street as shown on the map? A. Yes.

Q. How far west does the stock yards extend?

A. On the west it is bounded by 36th street and west L street.

Q. How many acres of ground have you in the stockyards?

A. One hundred and seventy-seven.

Q. How much ground approximately does that portion of the stock yards cover used for the handling of live stock?

A. Including the railroad tracks upon the ground, about 130 acres.

618 Q. Where are the main chutes located through which you load and unload stock on the Union Pacific site destined for the stock yards?

A. We have two systems of chutes, one commencing under the L street viaduct extending some 1200 feet south and the other commencing at the chute house near N street, consisting of 52 chutes. The 1200 feet cover thirty chutes, that is, so far as the Union Pacific is concerned, we have other chutes in other portions of the property.

Q. The Stock Yards Company owns a system of tracks, does it not, just west of the Union Pacific right-of way in South Omaha and parallel with the tracks of the Union Pacific right-of-way?

A. It does.

Q. Is there a connection between this system of tracks just mentioned and the Union Pacific tracks?

A. There is.

Q. Where is that connection?

A. At or about N. street.

Q. How many tracks does the Union Pacific own south of the point of connection and west of its west bound main line?

A. I think that they have either five or six tracks.

Q. Are a portion of the five or six tracks you have just mentioned, the tracks set apart by the Union Pacific for the use of the Union Pacific tenant lines?

A. As I understand it.

Q. Those tracks west of the west-bound main line extend right over to the Stock Yards right-of-way?

A. Yes sir.

Q. Is there any room at the present time for any
619 other tracks west of the west bound main line and the stock yards right of way and south of the connection between the Stock Yards tracks and the Union Pacific main lines? A. No sir.

Q. I believe you said you went to the Stock Yards in 1897

A. July 1, 1897.

Q. Has the traffic over the tracks of the Union Pacific and into and out of the connection with the Stock Yards increased since you went there in 1897? A. It has.

Q. To what extent approximately?

A. (Referring to report.) This is our 22nd Annual Live Stock Report for the year 1905 and a summary for the years 1884 to 1905 inclusive, and refers only to live stock shipments. In 1897 there were delivered to the Stock Yards Company by all lines 59,823 cars of live stock and there were delivered by the stock Yards to all lines 15,547 cars. In 1905 there were delivered by all lines to the Stock Yards 84,326 car loads, an increase of 25,000 cars in round figures, and there was delivered by the Stock Yards to all lines in 1905, 18,911 cars, an increase of 3,400 cars.

Q. At the time you went to the Stock Yards in 1897 you may state where deliveries of stock brought in by the tenant lines of the Union Pacific were made, that the Stock Yards might complete the delivery either to the chutes or industrials?

A. They were made on the same tracks in 1897 that they are now made in 1905 & 6.

Q. Does the Stock Yards have any tracks set aside on which it receives freight from the tenant lines for delivery to
620 the Stock Yards?

A. There are two classes of freight received by the Stock Yards livestock and dead freight. The livestock is handled on the main line of the Union Pacific or placed upon the lead from the Union Pacific to the Stock Yards tracks

and taken by the Stock Yards engines from the main line or from this lead as the case may be.

Q. In the case of dead freight delivered by tenant lines how is that handled?

A. It is customary owing to the congestion at that point, for the tenant lines or connecting lines with the Stock Yards to place dead freight on one of four or all of the four tracks known as tracks 1, 2, 3, & 4, belonging to the Stock Yards Company, north of the lead referred to.

Q. And west of that portion of South Omaha bounded by say N and J streets? A. Yes.

Q. In case the tracks set aside for the tenant lines on the west side of the west bound main line and south of the Stock Yard connection are vacant are they used for the delivery of cars by the tenant lines? A. Not in all cases.

Q. Why is there no particular track down there on which deliveries are made?

A. Deliveries to the Stock Yards or from the Stock Yards?

Q. Deliveries to the Stock Yards, has the congestion anything to do with that?

A. Well, naturally, if the Union Pacific could assign to their tenant lines receiving and forwarding tracks, they
621 would do so, but as they have not the space, the ground upon which to build a sufficient number of tracks, the custom has grown up of delivering to the Stock Yards Company dead freight on tracks owned and operated by the Stock Yards Company.

Q. In the case of cars of one tenant line for delivery to another tenant line, where are those cars delivered to the Stock Yards?

A. Ordinarily on the tracks assigned by the Union Pacific to their tenant lines south of N. Street.

Q. Describe the method of handling ten cars left on those tracks provided by the Union Pacific, for instance, by the Rock Island, for delivery to the Great Western?

A. If that was dead freight, the Rock Island would bring it in, place it on one of these four tracks mentioned—

• By Mr. Kellogg:

Q. What four tracks, the Union Pacific or the Stock Yards?

A. No, the Stock Yards tracks, and would deliver us an order to deliver those cars to the Chicago, Great Western. We would then place those cars upon the track that the Great Western was making up its train on.

By Mr. Rich:

Q. That is, one of the tracks set aside by the Union Pacific for that purpose?

A. Yes sir, it might be in a case of rush, we have many of

those cases, that these cars would remain upon one of these tracks and the Great Western engine might come in and take it and assemble it in the train they were making up.

Q. And assemble it on the tracks set aside by the Union Pacific? A. Yes, sir.

622 Q. That, however, would be an exception and would be occasioned by a congestion at that moment?

A. Yes, sir, congestion, or the fact that our switch engines were in service in other points, and we could not give the cars to the Great Western as promptly as they would like to have them in order to move their train in other words, a spirit of accommodation.

Q. Has the congestion at or near N street anything to do with the daily handling of cars over the connection between the Stock Yards and the Union Pacific tracks, does it modify it from day to day I mean?

A. Well, in 1897 there was not sufficient trackage accommodations at that point and the business of all lines to the Stock Yards has very materially increased and the lack of facilities has necessarily been less than they should be to properly and economically handle the traffic.

Mr. Kellogg:

Q. The facilities have been increased, haven't, they?

A. The track facilities, no.

By Mr. Rich:

Q. Can the trackage facilities at that point be increased, is there any room?

A. Not at that particular point, but the congestion can be relieved by assembling these trains at other points where additional tracks can be put in, and it has been the intention, plans have been drawn between the Union Pacific and the Stock Yards looking toward that end.

623 Q. That is, to moving the tracks that are now used by the tenant lines just south of the Union Stock Yards connection with the Union Pacific, to a point further west in the yards?

A. Not necessarily moving the tracks but increasing the yard facilities. The Union Pacific realizes that to handle the business in the Stock Yards that it is necessary to provide other tracks.

Q. Then as a matter of fact by the terms of Section 8 of Exhibit 7, the Stock Yards Company was allowed to perform services in the stead of the Union Pacific that the Union Pacific would otherwise have performed, for instance, in switching from the Union Pacific tracks, from one track to another?

A. I cannot answer that, Mr. Rich, because when a track is assigned to a connecting line with the Stock Yards Company,

we are not supposed to know that the Union Pacific could or could not have performed the service that might be contemplated in the contract between the Union Pacific and its tenant lines, which contract we have no knowledge of.

Q. Mr. Babcock was general manager at the time Exhibit 7 was executed? A. Yes sir.

Q. Do you have any complaints at the present time with reference to the congested condition of the tracks at N street and the consequent delays in holding cars for the various roads at that point?

A. The complaint is constant, Mr. Rich. These complaints at times, in years gone by, have been taken up formally, but the Stock Yards Company, knowing the situation, could
624 not very well force anything upon the Union Pacific or its tenant lines in the way of additional facilities, and the complaints are so well known that it is not necessary at this time nor for some time previous, to make any formal complaint or charge.

Q. Mr. Kenyon, do you know what the switching charge was in effect prior to the time of this contract for the services provided for in Section 8 of the contract of 1896?

A. The contract of '96 was the result as I understand it, of the operation of the switching business to and from the Stock Yards by I think, it was the Union Pacific road, and those charges as shown in the switching agreement were supposed to cover the actual cost of switching at that time.

Q. Then the charges as provided for by Section 8 are less than the ordinary charges for services of a like character?

A. Well, the switching tariff was made up as a whole. Now, while that transfer charge is \$1.00 a car, that is not our maximum charge for switching. Packing house products pays a higher rate and we have considered for sometime past the matter of notifying the lines under this contract of our desire and intention to advance all of those switching charges by reason of the fact that material and labor has gone up very much in the last eleven years, ten or eleven years and that that tariff was based at the time upon the actual cost of operation.

Q. Does the Stock Yards pay the Union Pacific anything for the use of the Union Pacific tracks it uses in performing these switching services that you have just detailed?

A. No sir.

625 Q. Would it relieve the congestion at this point if new facilities were provided farther west and new tracks provided for the tenant lines farther west in the yard, and the Union Pacific doing the switching between the tenant lines and the Stock Yards itself?

A. It would relieve the congestion and if the Union Pacific did the switching from these tenant lines to the Stock Yards

Company it would relieve the Stock Yards Company of that expense, so far as the Stock Yards might be to any expense in going from the Stock Yards lead for example, down to Albright in the new yard.

Q. The Stock Yards now switches all grain from the Updike Elevator does it? A. It does.

Q. What is the switching charge?

A. On all inbound cars handled through the elevator \$2.00 per car, and on all outbound cars handled through the elevator \$3.00 per car.

Q. Has the Stock Yards Company any contract or proposed contract with the Mason City & Fort Dodge Road or the Great Western or the Independent Elevators for switching to the Independent Elevators?

A. No contract, the switching is governed by a grain switching tariff which is in force.

Q. Well, I mean have they any contract or proposed contract for switching entirely up to the Independent Elevators?

A. It has no contract nor does it propose to make any.

Q. Is there any charge to a tenant line of the Union
626 Pacific for delivering a car of grain to the Updike Elevators delivered to the Stock Yards by a tenant line?

A. No, we collect the \$2.00 a car in from the Updike Elevator Co. direct.

Q. Does Exhibit 7 and Exhibit 6 correctly show the switching charges for all classes of business therein named at the present time?

A. Exhibit 7 is simply an abstract and I think it is in full, of the original memorandum of agreement. Exhibit 6 is the tariff issued in accordance with that contract, but we have other tariffs on grain that were not covered by this original contract because at the time there was no such industry on our line.

Q. What is the ratio or proportion of the present volume of business transacted by the Stock Yards as compared with the volume of business transacted by the Stock Yards in Chicago?

A. I only can speak of the livestock shipments. The Omaha Stock Yards in total receives about 26% as much livestock as the Chicago yards.

Q. With reference to Kansas City what is the per cent?

A. The Omaha Stock Yards does about 60% as much business as the Kansas City Stock Yards.

Q. With reference to the St. Joseph, Missouri?

A. The St. Joseph Stock Yards does about 70% as much business as the Omaha Stock Yards.

Q. And with reference to Sioux City?

A. The Sioux City Stock Yards does something like 34%

as much business as the Omaha Company.

627 Q. Mr. Kenyon, in the case of the Stock Yards switching cars from one to another of its tracks just west of J, K and L streets, in making the switches from one track to another, is it necessary for the Stock Yards to back down on to the Union Pacific track at the point of the cross-over?

A. It is not only not necessary but it would not be permissible and it does not handle those cars in that manner, that is from the storage tracks of the Stock Yards that I have designated as 1, 2, 3 & 4, we would not handle a car from one of those tracks to one of the other tracks and use the Union Pacific's tracks.

Q. Or any part of it? A. No sir.

Re-direct,

By Mr. Kellogg:

Q. Since 1897, then, the usual way of receiving inbound dead freight is for the tenant lines to put it on a stock yards track is it not?

A. Yes, that custom has grown up for the reasons that I have already stated.

Q. And receiving inbound stock for the tenant lines to put that on the stock yards tracks? A. Not wholly.

Q. Well, I didn't say, wholly, generally? A. In part.

Q. Well, in principal part?

A. No, I would not say the principal part.

Q. Generally speaking, isn't it true that most of the stock by the tenant lines is delivered on to your lead track in
628 to your yard tracks owned by you or controlled by you?

A. It depends altogether on the situation at the time, I don't want to be finicky about this, you know, but if there is room on the Union Pacific track the tenant line will leave that there just as soon as it can, if there isn't, or if there is an interruption down there, they will put it onto the lead from the Union Pacific to the stock yards track.

Q. But the practice has been in existence for years of tenant lines delivering both stock and dead freight to your company on your tracks? A. Practically, yes.

Q. In any event, all deliveries and receipts to and from tenant lines and the Union Stock Yards are made without any intervention of any switching by the Union Pacific Company, isn't it true?

A. Well, of course, in coming off of their main line on to their switch tracks as soon as they get off from the main line is protected, then all of those switching tracks, storage tracks, or holding tracks, as the case may be, are operated in common.

Q. No, you don't understand me; I mean switch engines, all deliveries are made by tenant lines to and from your company's lines without any switch engines or switching work done by the Union Pacific? A. Yes sir.

Q. So that direct deliveries are made between your lines and the tenant companies without the Union Pacific performing any switching services?

A. There may be one exception, Mr. Kellogg, and that is the case of the Wabash.

By Mr. Kellogg: Well, they are not a tenant line.

Witness excused.

629 L. S. Cass, a witness produced on behalf of plaintiff, being first duly sworn, testified as follows:

Examined in Chief,

By Mr. Kellogg:

Q. Mr. Cass, what is your full name and residence?

A. L. S. Cass; St. Paul, Minnesota.

Q. Are you an officer of the Great Western Railway?

A. Yes sir.

Q. What position do you occupy?

A. Third Vice-President.

Q. How long have you been in the railroad business, off and on? A. About 23 years.

Q. You have occupied what positions in that time?

A. Well, everything from a telegraph operator to a Vice-President.

Q. Mr. Cass, are you familiar with the location of the Union Pacific tracks, the Stock Yards tracks, and other tracks between Council Bluffs and South Omaha? A. Yes sir.

Q. Have you been over them all? A. Yes sir.

Q. Have you watched the operations of trains by the tenant companies and other companies? A. Yes sir.

Q. Have you specially given attention to the operation of the 6th street yards and the 20th street yards of the Union Pacific? A. Yes sir.

630 Q. You have watched the movements of trains there for many consecutive hours? A. Yes sir.

Q. You heard the testimony in this case as to how it was proposed to have grain delivered by lines coming from the west reaching South Omaha from the west to the Great Western terminal at G street, did you not? A. Yes sir.

Q. Would deliveries made as indicated by the testimony of Mr. Stickney, that is, deliveries direct by the Western lines on to the tracks of the grain terminals at G street, South Omaha, relieve the Union Pacific tracks, or tend to congest them?

A. It would very materially relieve them.

Q. You heard the testimony as to the proposed manner in which the Union Pacific insisted on grain being delivered by having the western lines bring it to the 6th street yard, the Union Pacific take it from the 6th street yard and deliver it in to the Great Western 20th street yard, the Great Western then take it and deliver it in to the grain terminals, did you not? A. Yes sir.

Q. Would that use the main tracks and congest the main tracks of the Union Pacific much more, if any more, than the direct deliveries as I have previously described?

A. Very much more.

Q. State how trains coming from the west get into the 6th street yards?

A. By passing along the eastbound main track to clear the block and the cross over switches at the bridge and then
631 backing in over the passenger main lines into the 6th street yard.

Q. Does every switch into the Union Pacific 6th street yards, trains coming from the west block the entire throw to the bridge? A. Yes sir.

Q. That is the plan which the Union Pacific now deliver grain into the Great Western terminals, isn't? A. Yes sir.

Q. In delivering grain into the Great Western terminals in Omaha by any of the tenant lines coming from the east, how is it now delivered? Take the Rock Island, for instance?

A. I have not followed the movement of a car of grain from the east into our grain terminals.

Cross Examination,

By Mr. Rich:

Q. Mr. Cass, in saying that to deliver a car of grain from the west to the Union Pacific at 6th street and have it from there delivered from the Union Pacific to the Independent elevator, would greatly increase the congestion of the tracks and interfere with the tracks, you assume, do you, that when that train reaches the bridge and runs out on the bridge in order to back into the 6th street yards, it would obstruct both of the passenger tracks? A. No.

Q. Then if you answered in that manner it was unintentional, wasn't it?

A. Yes sir, I did not intend to say it obstructed both passenger tracks, it obstructs the eastbound passenger main tracks.

Q. But does not obstruct the westbound?

632 A. Not unless they cross over.

Q. Then if you did so state in the record, it was unintentional and wrong A. Yes, sir.

Q. What is the end of the run, or where is it, of regular freight crews entering St. Paul on your road?

A. Which end, the north end or the south end, the divisions?

Q. Well, from the south end, coming from the south going north? A. West of St. Paul.

Q. And running in the contrary division?

A. Well, our way freight is Hayfield, our through freight division is Oelwein, that is down the main line.

Q. That is how far from St. Paul?

A. Oelwein is a hundred and eighty some odd miles.

Q. Do your regular freight trains stop inside the city limits of St. Paul for the purpose of switching out cars or are they distributed from the terminal by switch engines?

A. Generally from the terminal by switch engines.

Q. Do you know what the practice is pursued by the Milwaukee and St. Paul in that respect? A. No, I do not.

Q. Or any of the other lines entering the city?

A. Well, not of personal knowledge.

Q. What is the general practice of railroads entering large cities with reference to having breaking-up yards and distributing cars outside of the city or outside of the congested part and distributing cars from there with switch engines?

A. It is generally done, they generally break them up in the yard and handle them with switch engines.

633 Q. In what manner does the Great Western get its freight from the Washington Avenue freight house in Minneapolis?

A. With what is known as a transfer engine going from West St. Paul to Minneapolis.

Q. Over your tracks?

A. On our own and leased tracks.

Q. Do you stop between St. Paul and Minneapolis for the purpose of switching?

A. Yes, if we have occasion to, we switch at East Minneapolis and switch the Minneapolis transfer and anything we have occasion to switch we stop between St. Paul and Minneapolis and do the switching.

Witness Excused.

634 Phillip F. Johnson, a witness produced on behalf of the complainant being first duly sworn, testified as follows:

Examined in Chief by Mr. Kellogg

Q. What is your business, Mr. Johnson?

A. General Yard Master of the Great Western.

Q. Over what territory do you have jurisdiction?

A. Council Bluffs, Omaha and South Omaha.

Q. How long have you been yard master?

A. Eleven months.

Q. Have you had any experience on these yards on the Union Pacific tracks prior to that time?

A. Yes, sir.

Q. In what capacity?

A. I was fireman of an engine doing work in the three towns about a year for the Great Western, and about fourteen years off and on with the C. & N. W., the Milwaukee and the Rock Island.

Q. Working in these various yards? A. Yes, sir.

Q. Across the bridge? A. Yes, sir.

Q. In delivering grain in to the Great Western terminal by any of the tenant lines, the Rock Island, Northwestern or the Milwaukee from the east how do they now do it?

A. The trains are broken up at Council Bluffs and put in what we call a transfer, handled by a switch engine and switched over the Union Pacific tracks to a point at 20th street.

Q. On the main track? A. On the main track.

Q. At 20th street what do they do with them?

A. They are delivered to the Union Pacific.

635 Q. In what yard? A. The 20th street yard.

Q. By backing in to the west end of the 20th street yard? A. Yes, sir.

Q. Then what becomes of them?

A. The Union Pacific will take the cars and deliver them to the Great Western at the 20th street yard.

Q. Pull them out of the Union Pacific yard and back them in to the Great Western 20th street yard? A. Yes, sir.

Q. Then what will become of them?

A. The Great Western will take them up to the grain terminal and place them for unloading.

Q. Where is the Great Western Switch engine?

A. They are working over here most of the time.

Q. Now as the tracks are now constructed at that place, would it congest the Union Pacific tracks or make any more service of their main tracks for these tenant lines to deliver the grain directly in to the Great Western 20th street yard, than it would for them to deliver it in to the Union Pacific 20th street yard and the Union Pacific to make the delivery to the Great Western? A. I think not, no sir.

Q. Does it take any more time to run in to the Great Western yard than it does in to the Union Pacific?

A. I would say that it would take more time to make the delivery to the Union Pacific on account of the congested condition of the Union Pacific 20th street yard.

Q. Of the yard, not the main track? A. No, sir.

636 Q. Now, suppose at that point at 20th street the connection was made so that any one of the tenant lines

coming from the east could head directly in onto the red track, which is the approach to the grain terminal, would that make still less use of the Union Pacific track?

A. Yes sir, it would.

Q. Would it, or would it not, make less use of the Union Pacific tracks than to have the tenant lines deliver into the 20th street yard?

A. Yes sir, it would make less use of the Union Pacific tracks.

Q. In grain coming from the west, you heard the testimony of the witnesses as to how it is proposed to have grain delivered from the Rock Island and other western lines direct onto the Great Western terminals at G street, did you? A. Yes sir.

Q. State whether that would use the Union Pacific tracks less, congest them less, than it would to have the grain delivered to the Union Pacific at their 6th street yard by them delivered to the Great Western 20th street yard, and by the Great Western into the grain terminals?

A. Grain coming from the west?

Q. Yes sir.

A. It would simplify matters and keep the main tracks of the Union Pacific clear more than if they were delivered at the 6th street yard.

Q. When you are operating engines, switch engines, or trains, over any part of the Union Pacific tracks in Omaha, under whose orders are you working?

A. The Union Pacific's rules and instructions.

Q. State whether you are subject to their orders in the same way that their own crews and own employees are?

637 A. Yes sir.

Q. That is, you say that it will make less use of the Union Pacific tracks to have it delivered direct by the lines coming from the west at G street? A. Yes sir.

Cross Examination,

By Mr. Rich:

Q. Mr. Johnson, the proposition you detail is, that it would not congest the Union Pacific tracks as much between South Omaha and the bridge for a Rock Island switch engine to deliver one car of grain from the west at the G street connection with the proposed track, as it would to deliver that car at 6th street and thus run over the entire eastbound main line from South Omaha to 6th street, set it out there and then have it delivered by the Union Pacific switch engine to 20th street, you say that would not congest the tracks as much as if it were set out at 6th street and the Union Pacific handle it, do you?

A. Yes sir.

Q. Now there are further elements, however, that enter into the delivery of these cars, are there not? A. In what way?

Q. You would take all of these deliveries with a switch engine would you?

A. I am assuming they would be made that way.

Q. It is a fact, isn't it, that the Rock Island coming from the west now, and having any grain for the Independent Elevator, or any other cars to deliver to the Union Pacific, runs its freight trains straight through to South Omaha to 6th street and cuts these cars out there?

A. Yes, but I wish to state that I worked for the Rock Island a long time and anything we had for South Omaha in the line of dead freight was always broken out of the train at the Albright yard and the switch engine would handle it from there.

Q. Anything you had for the Rock Island for South Omaha, the Independent Elevators are not in South Omaha, are they?

A. No sir.

Q. And it is a fact that up to the present time when you had any grain for the Independent elevators brought by the Rock Island or any cars for delivery any place in Omaha, you set those cars out of a freight train that came through from South Omaha?

A. Yes, but it would not be practicable to have a freight crew that has been on the road for some time to do switching all along the line.

Q. Why isn't it practicable?

A. Because it would keep the crew on the road too long for one thing, and when you have got a switch engine employed the switch engine handles that business.

Q. Well, what does the freight trains' stopping along the tracks for the purpose of switching do to the tracks?

A. Why, it blocks them.

Q. So that under the method you now handle cars destined for Omaha, it would not congest the tracks less for the Rock Island to handle it than for the Union Pacific to handle it, would it? A. Yes it would.

Q. Well, now, we will take that up. Now if the Rock Island came in from the west with a freight train of 20 cars with 10 cars of grain in that freight train of 20 cars with 10 cars of grain in that freight train for delivery to the Independent elevators, in order to deliver that grain at G street you would have to deliver it in one of two ways wouldn't you: you would either have to pull your train upon the eastbound Union Pacific main line of the G street connection and then cut out the 10 cars of grain and haul them into the elevator over the Union Pacific westbound main line, crossing it, leave them at the elevator and back out and pick up the balance of your train which, in the meantime, would have been standing on the eastbound main line all of that time, or you

would pull your entire freight train into that connection, cross the westbound main line and come out at 20th street with the balance of your freight train and go on for Council Bluffs, you would have to do it one of the two ways wouldn't you?

A. As the conditions now are, yes sir.

Q. So when you said that it would be easier, that it would cause less congestion for the Rock Island to make a direct delivery you meant under some new conditions, for instance, that the grain should be handled by a switch engine?

A. Well now, you take a train going to 6th street, you are assuming that the cars will all be together in that train, to be set out at that one point, are you not?

Q. No. A. Scattered along the train?

Q. In the train, in any position, either together or otherwise?

A. I think they could clear your main track quicker.

Q. By using a freight train even, to pull the cars up there?

A. Yes sir.

Q. Well, if they brought a freight train up onto the eastbound main line to the G street connection, you would have to stop there to open your switch that would let you across the westbound main line to the connection with the 1700 ft., 640 track, wouldn't you? A. Yes sir.

Q. How many switches would you have to open at that point?

A. That would depend on the way the track was laid.

Q. Well there would be two at least, wouldn't there?

A. Yes, there would.

Q. Then after you got your train over the westbound main track and on to the 1700 ft. track, you would have to close those switches?

A. That wouldn't obstruct the main line, closing the switches.

Q. No, but it would take that time, wouldn't it? A. Yes sir.

Q. Then if you had your whole freight train with you, you would pull up to the Independent elevators and cut out your 10 cars of grain, then you would have the balance of your train left, to-wit: 10 cars destined for Council Bluffs; now, if you went out through the east end of the elevator yards, as the track is at present constructed, you would have to run east on the track set aside for the Great Western to where it connects either with the 16th street freight house track, or where it connects with one of the tracks of the Union Pacific at 20th street, run in past the connection with the westbound main line and then back out over the westbound main line and back on to the eastbound main line, and then proceed east with the rest of that train?

A. You are giving me a proposed condition on the one end and a condition that exists on the other.

Q. Well, the conditions that I have stated as to the east end is exactly as it exists at the present time, isn't it?

A. Yes sir.

641 Q. Well when Mr. Kellogg put his questions to you, he put them to you on the basis of a proposed condition at G street, it is not in that condition yet?

A. Well, you are patting the question to me as a proposed condition on the one end and a condition that exists on the other?

Q. Yes sir?

A. Well but the proposed condition on 20th street would be where the trains could head out.

Q. You now want to change conditions again at 20th street? A. No, I don't.

Q. Well, let us take the conditions as they exist, suppose they are not going to be changed, you would have to back out in the manner I have indicated to proceed east on the eastbound main line? A. Yes sir.

Q. Now if the conditions at 20th street are handled so there would be a recross-over, and you could head across the westbound main line on to the eastbound main line, you would still have to cross the westbound main line again at 20th street with your freight train. A. Yes sir.

Q. Or you could go up to the elevators with your entire freight train, cut out your 10 cars and then back out again over the westbound main line on to the eastbound main line at G street and then proceed over the eastbound main line to Council Bluffs? A. That would not be practicable.

Q. You think the 20th street yard would be the proper one?

A. Yes sir.

642 Q. Then at the present time, Mr. Johnson, your switch engine does not deliver any grain from the west to our yard at 6th street, it is all done by your regular freight trains, isn't it?

A. I have no occasion to, I am not a Rock Island man, I am a Great Western man.

Q. But I say that is a fact isn't it? A. What is a fact?

Q. That all the grain from the Rock Island for delivery into Omaha, is set out at 6th street by the regular freight trains and not by a switch engine?

A. Yes sir, I think I could explain—

Q. In doing work in yards why do they use switch engines and switch engine crews in preference to using road engines and freight crews?

A. Men working on switch engine are more familiar with the work, get around.

Q. Do it quicker? A. Do it quicker.

Q. Did you hear the testimony yesterday of Mr. Wright?

A. Yes sir.

Q. And heard him say that the Rock Island had a switch engine that it kept at Council Bluffs that made four round trips daily between Council Bluffs and the Albright yard? A. I did.

Q. Now in case the delivery by the freight train is east, and the deliveries are to be made by the switch engine as indicated by Mr. Kellogg, that switch engine every time it made a trip to Albright, would haul east whatever cars there were there for delivery into Omaha, that would be the ordinary custom and practice? A. Oh, I think not.

643 Q. What practice would be pursued?

A. Why, the road train would continue setting out Omaha stuff, that is, with the exception of the grain terminals.

Q. Then in case of the grain it would make an exception, in the case of everything else the freight train would still continue to set it out at 6th street? A. Yes sir.

Q. Well now suppose a switch engine was not put in, the custom of delivery of grain, the present custom was not changed, then all the grain over the Rock Island would still be set out at 6th street, or the freight train itself would make the delivery over the connection at G street, would it not?

A. Yes sir.

Q. In case that the switch engine made the deliveries of grain at G street and it made the same number of trips that it does at the present time, it might make deliveries at G street four times a day, mightn't it?

A. Well, a good yard man wouldn't allow an engine to do that.

Q. What would he do?

A. He would hold the stuff until he got a train to take it up there and put it away.

Q. That grain has to be inspected when it is brought into Omaha, doesn't it? A. Yes sir.

Q. That takes how long, ordinarily?

A. I don't know I wouldn't want to say.

Q. Delays it one, two, three, four days, sometimes on the tracks doesn't it?

A. Some times, sometimes not so long.

644 Q. Now then, if the Rock Island freight trains should make all of its deliveries of grain at 6th street then the Union Pacific engine could bunch all of these deliveries, could it not, at any opportune time when the tracks were not congested together with the merchandise and other cars left at 6th street for the freight house, or team tracks and make in one delivery up to 20th street, what it might take the Rock Island four or five trips to make?

A. Providing the Rock Island is handled by a switch engine?

Q. Providing the Rock Island uses a switch engine?

A. No sir, it couldn't.

Q. Well, you say, don't you, that the same custom will prevail with carloads of freight destined for the freight house in Omaha it being set out at 6th street? A. Yes sir.

Q. And as it is conducted at present, the Rock Island brings it right straight into Omaha and leaves grain, dead freight, and everything else at 6th street doesn't it? A. Yes sir.

Q. Then the Union Pacific engine can bunch it and make one trip to 20th street with as many cars as it sees fit?

A. Well, will you tell me how many cars it can haul to 20th street?

Q. I don't know how many cars can it haul?

A. I should think about 15 cars, one train.

Q. Then the Rock Island can leave all these cars at 6th street under your statement, and under your statement, that it will continue to leave all cars other than grain at 6th street, then under the new condition you would add another switching element wouldn't you, to-wit: your switch engine delivering cars of grain to Albright at G street which would not be necessary at all, that is true, isn't it, if your statement is correct about the custom?

A. If they did not have a train of grain to make a delivery with they could possibly make a delivery of one car and bring the train on to their connections at Council Bluffs?

Q. You mean their independent connections? A. Yes.

Q. If they did that then the freight train would have to cross both tracks twice, wouldn't it? A. Yes sir.

Q. Have to block both main lines twice, that is right isn't it? A. Yes sir.

Q. Now then Mr. Johnson, which would block the tracks the most for the Rock Island freight train to bring its grain and other freight destined for the Union Pacific at 20th street to 6th street and have the Union Pacific switch it from 6th street up to 20th street using a track that no other tenant line has a right to use with the exception of the 115 ft. or 150 ft. near 20th street, or to have the Rock Island freight train continue to deliver freight at 6th street when the Union Pacific is obliged to haul it to 20th street and to have a third switching intermediary introduced, to-wit: The Rock Island switch engine, delivering cars of grain from Albright to the track at 6th street?

A. I merely suggest that the Rock Island would continue delivering their stuff down there, I am not saying that it would.

Q. But in answering the question of Mr. Kellogg you assume that that would be the condition? A. I do.

646

Re-direct Examination,

By Mr. Kellogg:

Q. If you had a switchman at G street you would not have to stop for throwing a switch would you? A. No sir.

Q. Is there any reason why a switchman could not be provided there as well as at 20th street? A. None whatever.

Q. What is the natural way for the Rock Island to deliver dead freight to the Great Western terminal, or at South Omaha?

A. With a switch engine.

Q. Is that the way they always have done it?

A. Yes sir.

Re-Cross Examination,

By Mr. Rich:

Q. Do the Great Western trains at the present time experience any delay between Council Bluffs and South Omaha?

A. Yes sir.

Q. Because the tracks over which they have the right to run are impeded in some manner by other trains?

A. I don't know just exactly how to answer that; but I would say it is owing to the condition of their yard, we do not experience much delay, or any to speak of, coming from Union Pacific junction, Council Bluffs, until we get to the bridge, and then we find switch engines and numerous trains crossing in and out of the yard, the same at the west end of the 6th street yard, and the same at 20th street.

Q. Well, then you are delayed by reason of congested track on the lines between 20th street and the bridge over which you have a right to pass?

647 A. I don't wish to say the main tracks?

Q. You haven't the right to pass over any other than the main tracks, have you?

A. Well, but the conditions in the yard is what regulates the main tracks.

Q. If the main tracks were clear you could go right on and would not be delayed would you?

A. Oh, no, we would not be delayed then.

Q. Now then, your delays are occasioned because you cannot get on the main lines, being the ones over which you have a right to run, that is the fact isn't it?

A. Yes sir, but I can cite you several instances where the main lines are blocked by Union Pacific trains on account of switch engines making up—

Q. We are talking about conditions as we find them, not the reasons, but the fact that you are frequently delayed. It may be your fault, it may be our fault, that is not what we are inquiring into at this time, but you experience these delays frequently in moving from Council Bluffs to South Omaha, do you not? A. Yes sir.

Re-direct,

By Mr. Kellogg:

Q. You said you would explain; take the delays at N street the connection between the N street yards and the Union Pacific what delays have you experienced there, if any?

A. We experienced considerable delays there on account of Union Pacific trains standing on the main line and especially their No. 55.

648 Q. What is their No. 55.

A. It is a freight train.

Q. What does it do?

A. Goes down to South Omaha, takes water, and the engine cuts off and runs ahead while the switch engine makes up the head end of the train, and we lay behind them until they get through.

Q. In other words they leave their train on the main track and switch on the main track. A. Yes, sir.

Q. Now is that the only complaint to be made at South Omaha?

A. Well, if we are inside the yard as we have been numerous times and try to get to Council Bluffs, we find the cross-over is blocked with this same train.

Q. Now have you experienced any particular delays in running over these tracks from Council Bluffs to South Omaha except by some such movement as that?

A. We experience delays at 20th street where Milwaukee trains are setting out cars and very often they are held out there by Union Pacific engines switching in the yard.

Q. Well, the delays are caused by the switching in this yard at the ends of the yard? A. Very largely, yes sir.

Q. Can the Union Pacific switch into the east end of its yard without getting on to the main track A. No, sir.

Re-cross by Mr. Rich:

Q. Then the delays which you experienced are caused by the switching of various trains on the various tracks leading into the main lines on which you have a right to run between the bridge and South Omaha?

649 A. Yes, sir.

Q. You may be delayed may you not, even though there is no train ahead of you if there is switching being done on a track enters in to the main line that throws a signal so that the track is closed against you? A. Yes, sir.

Q. And that you frequently experience? A. Yes, sir.

Q. Now, your trains running over the road frequently delay other trains, do they not?

A. I have not had any complaints about it.

Q. I don't know that you could remember these delays at

all, but you mentioned No. 55 as delaying the Chicago Great Western did you not? A. Yes, sir.

Q. Do you remember on December 8th whether No 55 was delayed in South Omaha by the Chicago Great Western bridge run? A. No sir, I do not remember.

Q. Do you remember whether on January 13th of this year Union Pacific No. 55 was delayed 25 minutes at South Omaha by the Chicago Great Western bridge run? A. No, sir.

Q. Well, as a matter of fact, Mr. Johnson, all these trains that run over this road are delayed by the movements of various other trains, that is unavoidable, isn't it?

A. Yes sir, some of it.

Q. That is, it is unavoidable under the present construction of the tracks and the number of trains they move over them?

A. State that again, please.

Q. I say these delays that you speak of are unavoidable in view of the tracks as constructed at the present time and the number of trains that are run over those tracks? A. Not the number of trains, no sir.

Q. That is not an answer to the question. Of course, if all the trains that are run over the Union Pacific tracks between the bridge and South Omaha were run straight through, you could run two, three, four or five times as many, that is a fact isn't it?

A. Yes sir; if one train switched at every sidetrack they run along, you could only run two trains over there too.

Q. Now then, these delays that you complain of owing to the present construction of the tracks and movements of the trains over those tracks, are the cause of those delays, and they are unavoidable, are they not? A. Yes, sir.

Q. If, on December 8th the Great Western bridge run delayed No. 55, 15 minutes, it did not do it purposely, did it, it was unavoidable, wasn't it?

A. Yes sir, I am assuming that it was.

Q. And if, on January 13th, the Great Western bridge run delayed No. 55 25 minutes at the Summit, the Great Western did not do that purposely, it was unavoidable, wasn't it?

A. Yes, sir.

Q. Now, if on December 8th Union Pacific No. 53 was delayed at South Omaha 20 minutes blocked by a Rock Island bridge run; and on the 12th the Union Pacific No. 51 was delayed 20 minutes at South Omaha blocked by a Rock Island switch engine; and if on December 12th Union Pacific express No. 1711 east was delayed at the junction, letting the Rock Island train up ahead; or if on the same day Union Pacific No. 58 was delayed 10 minutes by Chicago Rock Island No. 76; or if on December 15th Union Pacific No. 7 passenger was delayed at South Omaha 15 minutes by the Rock

Island bridge run setting out stock; or if on December 24th Union Pacific No. 2 passenger was delayed 5 minutes between South Omaha and Omaha, by Rock Island No. 6 ahead; or if on January 3rd the Union Pacific No. 7 was delayed 20 minutes at South Omaha by Rock Island No. 97; or if on January 9, Union Pacific No. 57 was delayed 10 minutes between South Omaha and Omaha by Rock Island bridge run ahead; or if on January 11th Union Pacific No. 7 passenger was delayed at South Omaha by Rock Island freight ahead, none of those blockings or delays were occasioned by any act purposely done by the Rock Island or Northwestern, were they?

A. I am not in a position to say.

Q. Well, you have had considerable experience in railroad matters haven't you? A. Yes, sir.

Q. And you don't imagine, do you, that these other roads would purposely block these trains off the track?

A. I don't wish to state what I imagine, I am only here to state what I know.

Q. You would not care to hazard a guess on your general experience as a railroad man would you?

A. I could guess at it if that is what you want.

Q. Guess at it then? A. I would say no.

Q. And you would say from your experience as a railroad man that those delays were unavoidable, wouldn't you?

A. Yes, sir.

Witness Excused.

652 Thomas Owens, a witness produced on behalf of complainants, being first duly sworn testified as follows:

Examined in Chief,

By Mr. Kellogg:

Q. Where do you live? A. Two Harbors, Minnesota.

Q. What is your business?

A. Superintendent of the Duluth & Iron Range Railroad.

Q. How long have you held that position? A. 15 years.

Q. The Duluth & Iron Range Railroad runs from Duluth up to the Iron Range? A. Yes sir.

Q. And from Two Harbors? A. Yes sir.

Q. And are you familiar also with the operation of the Duluth Massaba & Northern Railroad up in that same territory?

A. I am.

Q. Will you state in years past how many regular trains you have operated over a single track railroad for each 24 hours?

By Mr. Rich: Objected to as incompetent, irrelevant and immaterial, no foundation to show that there is any similarity of conditions.

A. As high as 89 trains a day average.

Q. What during the years past, has been the average number of daily trains during the busy season, the months of June, July, August and September, over the Iron Range single track railroad from Allen Junction to Two Harbors?

653 By Mr. Rich: Objected to as incompetent, irrelevant and immaterial, no foundation to show that there is any similarity of conditions.

A. 82 trains a day.

Q. Are those heavy trains or are they light?

A. Light one way, an average of [21] tons per train the other way.

Q. 2100 tons? A. Yes sir, the other way

Q. Gross, or net? A. That is gross.

Q. That is, during the term for a number of years you did that? A. Shipping season, as we call it.

Q. How many months?

A. Well, the busy season is practically five months, the whole season covers about seven.

Q. How many miles is that single track railway from Allen Junction to Two Harbors? A. 45 miles.

Q. Are they today operating trains over single track on the Massaba road? A. Yes sir.

Q. How many trains a day over a single track?

A. They have a gap of 18 miles over which they have operated 89 trains.

Q. A day? A. A day.

Q. Can you operate more than twice as many trains over a double track as you can over a single track?

A. We think so.

Q. How many trains can you reasonably put into your Iron Range yards over a single track entrance, how many

654 operations over that single track entrance a day?

A. We have a single track entrance into Two Harbors yard, we are running in there at present at the rate of 205 heavy trains each 24 hours.

Q. That would be how many movements over that track if you kept it up for the 24 hours, over 400?

A. That would be 205 in and 205 out.

Q. Is that a steep grade coming into Two Harbors from the hill?

A. Three per cent for the last 3 miles and $1\frac{1}{2}$ for the 11 preceding miles.

Q. That is the grade over which you operated these 82 trains for a number of years?

A. Yes sir, northbound with the empty trains.

Q. Southbound down that grade? A. Yes sir.

Cross Examination,

By Mr. Rich:

Mr. Owens, I did not understand the answer to one of the first questions, when these 89 trains were operated on a single track?

A. That was over 45 miles of single track and before the track was doubled, or in 1898.

Q. Well, I thought the 45 miles was between Allen Junction and Two Harbors where you operated 82 trains per day?

A. Yes, the 89 was on the Duluth, Massaba & Northern road over a gap of 18 miles.

Q. Now in operating the 89 trains over that gap of 18 miles, what was the character of the tonnage hauled, ore or something of that sort? A. Yes ore.

655 Q. All ore?

A. There are a few local [towns], principal trains would be heavy ore trains.

Q. Were there any towns or stations within that 18 mile gap where switching was done, deliveries were made?

A. There would be passing tracks but no towns to speak of.

Q. How long are the passing tracks? A. I could not say.

Q. And how frequent? A. I could not say as to that.

By Mr. Kellogg: Give it as near as you can?

A. Usually about 6 miles apart.

By Mr. Rich: Q. And you don't know how long they were?

A. Why, they are usually to take three or four trains, possibly 3000 ft.

Q. And would hold three or four trains at one time?

A. Possibly so, yes.

Q. Now was the operation of those 18 miles, is that where the grade was that you spoke of? A. No.

Q. What was the grade of those 18 miles?

A. Why, their main line is most of it about level grade.

Q. And what was the character of the trains run both ways over this 18 mile gap, were they empty one way and loaded the other? A. Yes sir.

656 Q. Are you familiar with the operation of those trains over that part of the road with reference to time?

A. Only as they compare with similar trains on our road.

Q. Well, I meant with the time of the day when they would pass in one direction or the time when they would pass in the other? A. Not particularly as to that.

Q. Well were they so run that the empty trains would meet the loaded trains within this 18 mile gap on the passing track?

A. They would naturally have to meet them on account of the frequent number of trains in passing.

Q. But within that gap no switching was done?

A. I think not.

Q. It was just a straight line of road where the trains each way had a straight way run, and that once started, they went through unless they were obliged to take one of the passing tracks? A. In meeting other trains, yes.

Q. Now, with reference to the run of 45 miles from Allen Junction to Two Harbors over which you operated 82 trains per day, those were ore trains were they? A. Yes sir.

Q. And one way they ran light and the other way they ran loaded? A. Yes sir.

Q. For the entire 45 miles? A. Yes sir.

Q. And on that 45 mile piece of track were there towns and villages and cities where freight was delivered and switched in and out? A. Several, yes.

Q. How many? A. Might I name them?

657 Q. Yes sir.

A. Highland, Cloquet River, Bassett, Skybow and Allen Junction.

Q. That is, there would be four towns between the two terminal towns? A. Five, there is one other, Waldo.

Q. And were those towns of the size that you had much freight to set out there or receive much freight from them?

A. Two of them.

Q. How large were the two largest?

A. Well, there probably on an average wouldn't be a movement there of more than 10 cars per day each way.

Q. And were any of those ten cars picked up and attached to any of these ore trains? A. No sir.

Q. Then your ore trains had the right of way straight through without adding any cars to or switching any from the two terminals?

A. Yes, except they would be obstructed by local freights?

Q. On this 45 mile piece of road you had passing tracks?

A. No sir.

Q. No passing tracks?

A. Well, one single track, do I understand?

Q. Yes? A. Oh, yes.

Q. Well, but this was a single track at the time you moved your 82 trains per day? A. Yes sir.

Q. And at that time you had passing tracks? A. Yes sir.

Q. Why was it changed from a single track to a double track? A. On account of the increase of business.

658 Q. You got to a point where you could not operate your trains economically and promptly on the single track? A. On the account of the increase of business, yes.

Q. In the case where you had 205 movements in and 205 movements out over a single track entrance, were those all your trains? A. Yes sir, at that rate.

Q. That was when trains loaded with ore ran in on to a certain track and the ore was automatically dumped?

A. No backed into the yard.

Q. Would the ore be dumped, was it run in there for the purpose of dumping at that point?

A. For the purpose of leaving it on that yard to be dumped later.

Q. Then, the running of those trains in and out of that single entrance, you would just back a train in with one movement and stop it and then do you [included] as a movement, the movement of the engine out over that single entrance that took the train in? A. No sir.

Q. What became of that engine?

A. She came out over the same track.

Q. Well, then what are your 205 movements out?

A. The empty cars.

Q. That had been dumped? A. That had been dumped.

Q. Does that mean trains or any odd number of cars?

A. Well, any way from 20 to 50 cars, empty cars out.

Q. And how many tracks were used in that yard in connection with those 205 movements? A. We have 45 tracks.

Q. What is the length of them?

659 A. 1200 ft. on an average.

Q. Then each one of them would hold about how many trains? A. An average of two trains.

Q. And were there any conditions surrounding the movements of those trains in and out of that entrance that would in any way interfere with the movement or did your Company have absolute control of the movement of every train that went in and out? A. We had absolute control.

Q. And you could move any train in and out at any time you saw fit? A. Yes sir.

Q. Were the movements in and out divided into equal periods of time or did the in movements alternate with the out movements?

A. Oh, just as it was convenient for the trains to move.

Q. And after they came out of this 45 track yard over this single entrance, how far did they then move over a single track?

A. Only just under the lead.

Q. How many feet would that be?

A. Seventy-five car lengths probably.

Q. Did you operate any fast mail trains over that entrance to the yards? A. Four.

Q. How fast were they?

A. About thirty miles per hour is our schedule time.

Q. And what other trains did you operate through that single entrance besides ore trains?

A. No other trains except these passenger trains.

660 Q. Except the four that you speak of? A. Yes.

Q. Then the entire movement of trains in and out was an ore movement except the four passenger trains that you name?

A. Yes, sir, or the switch engines working in connection with taking the trains out.

By Mr. Stickney:

Q. In running these eighty-two trains per day over a single track, do you run your trains in sections? A. Yes sir.

Q. How many sections to the train?

A. From six to ten.

Q. Now, what distance apart do you run those sections of your trains? A. An average of 500 feet.

Q. At what rate of speed do they run?

A. Our loaded trains 17 miles an hour, and light trains 20.

Q. Then at 17 miles an hour, 500 feet apart, they run with about a third of a minute headway, about a third of a minute between? A. It would figure out about that, yes sir.

By Mr. Rich:

Q. Do you operate under the American Railway Standard rules? A. Yes sir.

Q. What was the space interval of time between the trains?

A. I don't quite get your question.

Q. What is the space interval of time between the trains as specified by the rules?

661 A. Well, one mile apart.

Q. The condition under which those trains are operated in the manner you have just stated, is a very unusual condition, is it not? A. I think on most roads it is.

Q. And such a condition is possible only when trains are of the character as you have described and run over straight away roads with no stops for delivery of freight or switching?

A. Well they would have some of those trains to contend with, of course.

Q. That is the trains from the other direction?

A. Yes, or ahead of them.

Q. Were these trains run at any particular time in the day?

A. All times.

Q. In the twenty-four hours? A. Yes sir.

Q. The trains running in one direction were not bunched with reference to time? A. Not particularly, no.

Q. Do you consider 500 feet sufficient distance to enable a leading train to flag and stop? A. Not to properly flag, no.

Q. Then sufficient protection cannot be afforded the trains in running them in that manner?

A. Not flagging protection, no.

Q. If an air hose should burst on one of the trains, what would happen?

A. Well, the approaching fellow could stop as quickly as the fellow that might have such an accident.

Q. Well, but the following man would not stop how-
662 ever, unless he had some notice, immediate notice, of the stopping of the train in front.

A. He would be prepared to stop, knowing that he was following close.

Q. That would not be a safe way in which to operate mail and passenger trains, however, over tracks, would it, running at high rates of speed?

A. Possibly not, where a number of different railroad companies were operating over the same tracks.

Q. Well, it would not be safe to operate passenger trains run 45 miles an hour in that manner, would it?

A. It would not be considered safe.

Q. Do you ever have foggy weather there? A. Yes sir.

Q. What do you do in that case?

A. We would separate them.

Q. And would that result in causing a congestion?

A. Why, for a short period, yes.

By Mr. Stickney:

Q. But you did run those trains that distance apart for a short period of time, did you? A. In 1898.

Q. And you had no unusual accidents? A. No sir.

Q. You consider that it is about as safe to have the trains running in sight of each other as it is to depend upon flagging don't you? A. More safe, we found it so by experience.

Witness excused.

663 William H. Whalen, a witness produced in rebuttal, being first duly sworn, testified as follows:

Examined-in-Chief,

By Mr. Rich:

Q. Where do you live? A. At Boone, Iowa.

Q. What is your business?

A. I am Division Superintendent of the Iowa Division C. & N W Ry.

Q. How long have you held that position?

A. I have been at Boone four years.

Q. How long have you been in the railroad business?

A. Twenty-five years.

Q. How long with the Northwestern?

A. Twenty-five years.

Q. What various positions have you held with the Northwestern during your twenty-five years' service?

A. I started with the Northwestern as boiler maker foreman; I left that position for locomotive fireman, assistant to locomotive engineer; was traveling engineer, air brake instructor, round-house foreman, master mechanic, train master and division superintendent.

Q. Are you familiar with the Union Pacific tracks main line two tracks, switches and connections from the west end of the Union Pacific Bridge to South Omaha or a point just south of South Omaha or south of the—

A. No sir, not clear over them.

Q. You have been over those tracks from time to time?

A. Yes sir.

Q. How far does your jurisdiction extend, what are its limits?

664 A. I come to the Union Pacific tracks just west of our station at Broadway, Council Bluffs.

Q. Do you have anything to do, Mr. Whalen, with complaints or delays to your trains in running over the Union Pacific tracks between Council Bluffs and South Omaha?

A. Yes sir.

Q. And are you familiar with those complaints, the origin of them and the reasons for them? A. Yes sir.

Q. Have you with you any records of complaints for any period of time?

A. I have with me the morning report as we call it, that is made in my office each morning for a period going back for a considerable time, on that is shown the delays and causes for the delay.

Q. Will you produce those reports, please?

A. (Producing reports.) This is the morning report for the morning of June 20, and the first page is the passenger report and the next is the freight reports.

Q. Mr. Whalen, you may look at report of movements of your passenger trains as between Omaha and Council Bluffs for June 20, 1906, and state how many delays are reported to the passenger trains by reason of the tracks between Omaha and Council Bluffs being blocked?

Adjournment was here taken to 1:30 P. M.

Q. Mr. Whalen, would you consider it safe to operate passenger trains running from 30 miles an hour up in the manner just stated by the last witness. A. No sir.

665 Q. Would you consider it safe to run freight trains in that manner? A. No I would not.

Q. Did you ever know of any railroad running trains in the manner just detailed by the last witness?

A. No, I don't think I ever did, it was very interesting testimony to me when I heard it.

Q. And you have been familiar, have you, for a good many years with the manner of operating trains over the various roads in the United States? A. Yes sir.

Q. Did you ever hear of any instance before of that manner of operation?

A. No, that is the greatest number of trains moved over a single track I ever heard of.

Q. And did you ever hear of trains being moved over a single track in the manner as detailed by the last witness, within 500 feet?

A. Not and run that rate of speed.

Q. Mr. Whalen, you may examine Exhibit 52 and state whether or not that is a telegram sent day before yesterday June 19th to Mr. Ware? A. Yes.

By Mr. Rich: The defendant offers to read Exhibit 52 into the record.

By Mr. Kellogg: Objected to as immaterial.

By Mr. Rich: "Boone, Iowa, June 19. Chas. Ware, Omaha. No. 3 delayed yesterday 25 minutes between Council Bluffs and Omaha by trains ahead. No. 11 delayed five minutes by trains ahead. No. 22 delayed 15 minutes between 666 Omaha and Council Bluffs by trains ahead. This is getting to be a regular thing and I wish you would see what can be done to eliminate these delays to our passenger trains. W. H. Whalen, 9:20 A. M."

By Mr. Stickney:

Q. At this time isn't one of the tracks on the bridge out of order so that all trains east and west have to go over the same track?

A. No sir, not to my knowledge.

Q. You don't know that they are repairing it? A. No sir.

Q. You don't know whether they are not?

A. Why I understand that they are not, I haven't heard of that complaint.

By Mr. Rich:

Q. Mr. Whalen, you may examine the report or delays of June 20, 1906, that you have already identified and explained, and from that report give the number of your trains that were delayed on the 19th and 20th by the tracks between Council Bluffs and Omaha being blocked.

A. There were five on that date, numbered as follows: train No. 3, No. 11, No. 12, No. 72, I find but four when I go into it in detail, delayed by trains ahead.

Q. Does the sheet that you have read these delays from contain the passenger trains alone?

A. Just of passenger trains alone.

Q. Have you a sheet of the same date with reference to delays of freight trains?

667 A. Yes sir.

Q. Do you find any delays to freight trains on the 19th or 20th between Council Bluffs and Omaha by reason of the tracks being blocked?

A. No, sir I find one train on the 20th delayed two hours waiting for freight from the Union Pacific.

Q. Union Pacific connection? A. Yes sir.

Q. You may look at a report if you have one, for the 19th of June if that report shows any delays to passenger trains, you may give the number of trains and the number of delays.

A. Train 22 delayed between Council Bluffs, and Omaha by trains ahead; train 72 delayed between Council Bluffs and Omaha by trains ahead; train 74 delayed between Council Bluffs and Omaha by trains ahead; train 75 delayed by trains ahead.

Q. You may turn to record of delays to freight trains for that same day and state whether there are any reported?

A. None reported.

Q. You may turn to your report of the 18th of the passenger trains and give the number of trains and state delays if any, reasons therefor.

A. Train No. 5 delayed between Council Bluffs and Omaha by trains ahead; No. 75 between Council Bluffs and Omaha by trains ahead.

Q. You may state, after referring to your freight train record for the same day, whether or not any delays were reported? A. No sir.

Q. You may turn to your report of June 17?

A. Train No. 3 delayed between Council Bluffs and Omaha by trains ahead; No. 5 delayed between Council Bluffs
668 and Omaha by trains ahead; No. 72 delayed by No. 12 ahead; train No. 73 delayed between Council Bluffs and Omaha by trains ahead; train No. 75 delayed between Council Bluffs and Omaha by trains ahead.

Q. Mr. Whalen, how far back do the reports you hold in your hand extend? A. April 2nd.

Q. Have you examined those reports so that you can state whether the three reports you have already read from are a fair illustration of the daily delays or not?

A. Yes they are a fair report of the delays.

Q. Are you willing to state, Mr. Whalen, that the delays you have read into the record from your three reports would be an average, a fair average of the delays, month in and month out?

A. Well, now, I believe that we did a little better before they put on their work trains than we are doing now.

[A.] How long ago was that?

A. Oh, probably 6 or 8 weeks.

Q. Will you turn back to your April reports, the first one you have, for instance, in April, what is the date of it?

A. April 2nd.

Q. Will you state what delays, if any, that shows?

A. Train No. 72 Council Bluffs & Omaha delayed by trains ahead.

Q. Does it give the length of the delays?

A. Yes sir.

Q. You may give that?

A. Thirteen minutes. Train No. 73 fifteen minutes between Council Bluffs and Omaha, by trains ahead. Train No. 75, five minutes between Council Bluffs and Omaha by trains ahead.

Q. You may look at your report for April 3rd, 1906?

669 A. Train No. 12 delayed ten minutes by trains ahead. Train No. 72 five minutes between Council Bluffs and Omaha by trains ahead.

Q. Have you examined the other reports clear through with reference to delays?

A. I read them every morning the first thing I do.

Q. And the six reports that you have now read from, you are willing to state, are you, are a fair average of the delays as shown by the reports between April 2nd and June 19 of this year? A. Yes sir.

Q. In connection with the delays to your trains, Mr. Whalen, have you made some investigation into the manner of the handling of the business over its line by the Union Pacific officials, between Council Bluffs and South Omaha?

A. Yes sir.

Q. You may state whether, in your opinion, these delays are in any manner caused by improper handling of the business by the Union Pacific officials?

A. I don't think they are.

Q. What does cause them? A. Heavy business.

Q. Are you familiar with the custom of most roads in large cities and cities of the size of Omaha with reference to the handling of freight trains where the cars are for delivery into the particular city as to whether the train is hauled into the city and the switching there done, or the train broken up at convenient yards outside the city and delivered with switch engines?

A. Trains in large cities I am acquainted with haul them into the yards and break them up.

670 By Mr. Kellogg: Q. Delays in trains over all railroads occur, don't they? A. Yes sir.

Q. You have daily reports from all parts of your division showing delayed trains? A. Yes sir.

Q. In cities and out of cities? A. Yes sir.

Q. It is incident to the operation of all terminals, isn't it?

A. Yes, more or less.

Q. And the situation at Omaha is not materially different from any other points on your system?

A. Yes, I must say it is.

Q. Well, you know there are lots of delays in and out of Chicago on various lines, don't you, passenger be delayed from 5 to 8 or ten minutes, in going in and out of the city?

A. Well, not with us, we move those trains out of less—

Q. Well, now don't your reports show there in Chicago delays to your passenger trains every day of a few minutes going in and out of the city?

A. We have delays to our trains, but not as a rule, the report does not show so.

Q. And your reports show delays to freight trains all over your system every where? A. No sir, they don't.

Q. As a general proposition? A. We have delays.

Q. Now you have always had some delays down here at the Union Station in Omaha, haven't you? A. Yes.

671 Q. Always had for years?

A. In the last four years that I have been here, yes sir.

Q. You have only been there four years? A. Yes sir.

Q. You found that condition there when you came there, did you? A. Yes sir.

Q. And it has continued substantially the same?

A. Yes sir.

By Mr. Stickney: Q. Mr. Whalen, we have the train dispatcher's record here of train No. 5, your train No. 5, on the 17th of July which your report says left Council Bluffs delayed 10 minutes Council Bluffs to Omaha by a train ahead. Now, the report here shows that that train left the transfer yard junction, where is that the west end of Council Bluffs yard, left transfer yard junction at 11:30 and arrived at Union Station 11:34, now that was not a very great delay was it? The Union Pacific train dispatcher's record shows that you went from the transfer yard junction to the Union Station in 4 minutes as I read it. Where is east tower, which side of the bridge?

A. On the west end of the bridge.

Q. What time is that train due here, No. 5?

A. It is due here at 11:30.

Q. And it got to the station at 11:34? A. Yes sir.

Q. Now there is some mistake in your record or in the dispatcher's record here. Does this train arrive at night No. 5?

672 A. At night, 11:30, at night.

Q. Now this arrival at transfer yard junction at 11:30, that is the west end of the bridge; it arrived there just when it was due at the station. It was delayed between the west end of the bridge and the station, it took 6 minutes and got into the station at 11:36, which would make it 6 minutes late. What time was that train due at Council Bluffs?

A. At 11:07.

Q. Now it left over at the east tower, it got to the south of that 6th street yard at 11:30?

A. That 11:30 there is the transfer yard junction, the west end of the 11th street yard.

Q. Mr. Whalen, Mr. Ware says that transfer yard junction is there (indicating on map), now that is about 2500 ft. say from this transfer house; well, now, say that is transfer yard junction at the point 2500 ft. west of the transfer passenger station in Council Bluffs now the distance from there to the station is how far, the passenger station?

By Mr. Ware: I think it is 2.8 miles from Council Bluffs transfer to the Omaha Union station.

By Mr. Stickney:

Q. Well, it is about two miles. Now if your train on that night got to that point at 11:30, as this record shows and got into the Union Station, run that 2 miles and something over in 6 minutes there was not any particular delay between there and here was there?

A. Not exactly but there must have been delay over there.

Q. That is as fast, a little faster, than the rules allow you to run across there. Now whatever delay there was there then, was east of transfer yard junction?

673 A. No, I don't know anything about it.

Q. Here is the record of that train No. 5 it passed there at 11:30; now it arrived at Union depot at 11:36 just taking 6 minutes to run through there, which is a little faster than the law allows. Now then, if this record is right, whatever delay there was to that train must have been in getting from the Council Bluffs yard down to this place.

By Mr. Rich: Not at all.

By Mr. Stickney: Why not?

By Mr. Rich: Because all other roads that used these tracks have a right to run in there in the order of precedence, and if they were using the tracks you have to stand still until they get out of the way.

By Mr. Stickney: But the record does not say that. It says it passed there at 11:30; now the train that passed there

ahead of that was 11 o'clock, then there was one at 10:34, 10:05, 9:17, 8:40; now there wasn't any of those trains delaying that train was there?

By Mr. Rich: Not if their reading is correct, no.

By Mr. Stickney: Well, there was a movement within half an hour of that, here is every movement, switch engines and everything, this sheet purports to show the movement of every train, switch engines and light engine.

By Mr. Rich:

Q. What time was No. 5 due at the Union Pacific transfer yard junction? A. At 11:15 P. M.

674 By Mr. Stickney: It got there at 11:30 according to this report.

By Mr. Rich: No it passed there at 11:30.

By Mr. Stickney: Well, due and passed there and got there, is all the same thing. Your train was due at that junction at what time?

A. 11:15 P. M.

Q. And it passed there at 11:30, now whatever delay there was was before it got to that point, isn't that true, either before it got there or at that point, is that correct?

A. Why, it is impossible for me to say, I simply say that it is due there at 11:15.

Q. Well, if it left there at 11:30, whatever delay there was was before it got there, or at that point, wasn't it?

A. Certainly.

Q. Must be, cannot be otherwise, because it made a quick run from there into the station.

A. Might have arrived there at 11:15 and been held there for 15 minutes.

Q. But whatever delay there was, was over in Council Bluffs, now what time is your train No. 75 due at the transfer yard junction? A. 9:45 P. M.

Q. It left there at 9:55 and got into Union Station at 10:04 what time is it due? A. 10 o'clock.

Q. It was 4 minutes late in the station and left transfer yard junction, what is the time at transfer yard junction?
675 A. 9:45.

Q. It left transfer yard junction 10 minutes late, made that time and got into Union station 4 minutes, late, made up 6 minutes on this congested portion of the road.

Q. Now, on that statement how many Northwestern trains went in and out of Omaha, passenger trains, on that statement, how many are there on that statement dated June 17th?

A. I hardly understand your question; 21.

Q. Out of those there is 5 delayed? A. Yes sir.

Q. Were they all trains going in?

A. The odd numbers in and the even numbers going out.

Q. Well of those 4 were going in to Omaha? A. Yes.

Q. And 1 was the other way; now that No. 72 which was going east, you received that 20 minutes late at Omaha, didn't you? A. Yes, from the Omaha depot.

Q. Is that a passenger train? A. Yes sir.

Q. Was that waiting for some train?

A. Probably delayed in making up.

Q. Making up where? A. In the station at Omaha.

Q. Then you make up that train in the station at Omaha?

A. Yes.

Q. Then that was not delayed by congestion of the tracks between there, but simply— A. It says so right there.

Q. But you say it was 20 minutes late in getting out; that 20 minutes, was it from your own delay in switching and making it up in the yard?

A. It was delayed in the depot at Omaha, now we delivered that 20 minutes late at Missouri Valley, notwithstanding the fact that no doubt we made up—

Q. But I understood you to say that that left the Omaha depot 20 minutes late? A. Yes.

Q. Now you left the Omaha depot 20 minutes late, where—

A. Why it don't say there any more than we received it 20 minutes late.

Q. Well, where do you mean you received it?

A. At Omaha station.

Q. Well, that wasn't due to the congestion of the tracks between Omaha station and Council Bluffs, was it?

A. Not the original 20 minutes.

Q. Now, is there any evidence that there was any other delay than that? A. Yes sir.

Q. Where? A. Why here, it says delayed by trains ahead.

Q. No, no, 20 minutes late, Omaha No. 12, ahead, that means that you left—

A. That 12 didn't clear the block for this train so that it could make up time.

Q. Yes, you mean that it left 20 minutes late the Omaha station and it arrived at Missouri Valley 20 minutes late, Omaha No 12 ahead, what is Omaha No. 12?

A. Our passenger train No: 12.

Q. Your own passenger train No. 12 run right ahead of it and delayed you so you could not make up time? Well now that cuts it down to 4 trains out of 21?

A. There are 5 trains there.

677 Q. Well, I say leaving out the 72, leaves 4 trains out of 21 that was late; is that a very large proportion of trains? How far had these trains run, how far had No. 3 run?

A. Runs from Chicago right through to San Francisco.

Q. How far had No. 5 run? A. To Omaha.

Q. Run from where? A. Chicago.

Q. How far had No. 73 run?

A. Runs from St. Paul to Omaha.

Q. No. 75? A. Same.

Q. Well, now is that an unusual proportion of trains to be late? A. I should say it was, yes sir.

Questions by Mr. Stickney:

Q. Do you mean to say that four out of the twenty, that is a fifth—do you mean to say that a fifth of the trains that run four hundred miles or more into Chicago over the Northwestern road are not from two to three or five minutes late in getting in there? A. I will say that they are not.

Q. Well, I say you don't know what you are talking about.

A. All right.

Q. I say you don't know what you are talking about.

A. I mean trains that start out of Omaha for Chicago. I am not talking about any other.

Q. I am talking about all the trains that go in there, running five hundred miles.

A. I claim I know what I am talking about.

678 Q. How do you know what you are talking about?

A. Because I have been right in the depot and upon the trains there in Chicago.

Q. How long ago? A. About seven years ago.

Q. Well, if you were there I won't ask that should get the record and look it up.

A. No, I know what I am talking about.

Questions by Mr. Kellogg:

Q. Do these reports from which you read, show all the delays on the division of which you are superintendent in Iowa?

A. Does that report?

Q. Just take the one of June 20th? A. Yes sir.

Q. That shows all the delays of all your trains in Iowa?

A. Yes sir.

Q. At all points on the division of which you are superintendent? A. Yes sir.

Q. What division is that? A. The Iowa division.

Q. From where to where?

A. It extends from Clinton, Iowa, to Council Bluffs, and then from Des Moines, to Jewell Junction. Do you want the rest of the branch lines?

Q. Yes, you may name them.

A. If you wish I can give them as well as not.—And then from Clinton to Anamosa, and Stanwood to Tipton, and from Carroll to Audobon, and from Manning to Harlan.

679 Q. Looking at this report of June 20th, I notice train No. 12 which you state crossed the bridge, was delayed by trains also, was also received late at Omaha? A. Yes.

Q. Received from whom? A. That is the Denver train.

Q. That is received from the Union Pacific? A. Yes sir.

Q. Comes through from Denver? A. Yes sir.

Q. So it was late on the Union Pacific before delivering it to you?

A. The Union Pacific delivered it late, whether they were switching, or what they [—] doing, I do not know.

Q. You do not know as to that? A. No sir.

Q. I notice train No. 14 was late at Marshalltown?

A. Yes.

Q. At Tama? A. Yes sir.

Q. And lost time on account of heavy train? A. Yes sir.

Q. I notice that train No. 15 was received late at Missouri Valley on your line? A. Does it say at Missouri Valley?

Q. Missouri Valley, late at Missouri Valley, received late at Missouri Valley? A. Yes.

Q. I notice that train No. 16 reached Belle Plaine nine minutes late, received late at Belle Plaine.

680 A. Received late at Jewell Junction or Tama.

Q. I notice that No. 25—(interrupted.)

A. Let me correct—that is right; go ahead.

Q. That was right? I notice No. 25.

A. Delivered.

Q. Delivered where?

A. At Clinton, Iowa, 25—23 minutes late; Belle Plaine 10; Wheatland 15.

Q. That train was late at those places as stated?

A. Yes, sir.

Q. I notice that No. 51 was received thirty minutes late at what point? A. At Jewell Junction.

Q. I notice that on that same report, freight train No. 117 at Clinton, Iowa, was received late. Is that correct?

A. That is correct.

Q. I notice that No. 120 at Council Bluffs was received one hour late from the Union Pacific. Is that correct?

A. That is correct, yes sir.

Q. And lost time between Boone and Marshalltown, Iowa?

A. Correct.

Q. Give us the cause there?

A. On account of a strong northeast wind.

Q. And Clinton switch train? Is that correct?

A. Where does it say Clinton switch track? Clinton switching train?

Q. Yes. I notice 128 was late at Tama and Belle Plaine.

A. Yes, sir.

Q. Fifty minutes? A. Yes, sir.

Q. Taking up stock and time freight? And it was late at Lisbon and Mechanicsville, fifty minutes?

681 A. Yes, sir.

Q. On account of air hose bursting, and held by section men and loss on running time?

A. And held by section—yes, section men.

Q. And lost on running time on account of strong north-east wind? A. And Clinton switching train.

Q. And Clinton switching train in station here, and Consolidated freight extra, Barker? What do you mean by that?

A. Barker had an extra with some freight in it.

Q. I notice that train 131 left Missouri Valley one hour late, on account of switching train No. 120 and S. C. D. in Iowa? What is that?

A. Sioux City and Pacific yard, Sioux City Division.

Q. Now, there are trains late at quite a large number of stations on that day? Isn't that true?

A. That is true, yes sir.

Q. Look at that statement of April 2nd. I notice that you have a report of freight trains delayed at Clinton, 126?

A. 127 there.

Q. 127 delayed at Clinton. No. 119 at Dennison, two hours and forty five minutes. Is that correct? A. Yes, sir.

Q. No. 126 at Clinton? No. 119 at Cedar Rapids? Is that correct? A. Where is 119? Yes, that is right.

Q. No. 121 at Clinton? A. Yes, sir.

Q. That is right, is it. A. Yes, sir.

682 Mr. Kellogg: Now in order not to take too much time, I wish to offer in evidence, the reports. I have no objection to copies being furnished of the reports.

(Said reports are hereto attached, or herein incorporated, or true copies thereof, and made a copy of this record.)

Q. Are the same proportion of trains late on the other parts of the divisions, between April 2nd, and June 19th, as shown on the ones I called your attention to, substantially?

A. I want to ask you a question; You do not mean on the other parts of the division?

Q. No, I mean on the same division, I should have said.

A. Yes, yes sir.

Q. In other words, the sheet I read to you is a fair indication of trains late on other parts of the division, than in Omaha?

A. Yes, yes sir.

Q. Freight trains and passenger trains?

A. Yes, sir.

Q. Late every day?

A. We have late trains every day, more or less. On the same reports you should note that we have made up a great deal of time in every instance or in the majority of instances, if that is of interest to you in the case.

Q. Yes, but they show a large number of trains late at other points on your road than in Omaha? A. Yes.

Q. Every day? A. Certainly.

Q. Freight and passenger? A. Yes, sir.

Q. I did not ask you about all these trains on this
683 June 20th sheet. No. 29 showed passenger train late at Cedar Rapids, did it not? I will just take this one No. 29, shows late at Cedar Rapids, did it? A. Yes, sir.

Q. And No. 51 showed received late?

A. Yes sir. That is the one we were just speaking about.

Q. Then this train No. 52 was late at Ames?

A. Waiting for 9.

Q. No. 54 was late at Ames?—29.

A. O, I should say that is correct, yes sir.

Q. No. 55 was received late at Ames, was it not?

A. Yes.

Q. No. 60 was late at Ames?

A. 6 minutes to put a sleeper on 6.

Q. No. 61 was 15 minutes received late at what point?

A. At Jewell Junction.

Q. 72 and 73?

A. Those are passenger trains, 72, 73 and 75.

Q. 73 was received one hour late where?

A. From the passenger division at Missouri Valley.

Q. And No. 75 was received forty five minutes late?

A. Same.

Q. This is the same sheet I was talking about a few moments ago, that I asked you about, is it?

A. I do not remember the date; they are all the same.

Q. June 20th?

A. Yes sir; they all appear the same.

Q. This is June 20th? It is the same one I was asking you the trains from a few moments ago? A. Yes.

684 Q. That is a fair average of all the days between April 2nd and June 19th, isn't it? A. Yes sir.

Q. Who makes up these reports?

A. My chief train dispatcher.

Q. Where is he located? A. At Boone, Iowa.

Q. Who reports to him?

A. The conductors of those trains send messages relative to those delays, from which that is compiled.

Q. So that if the conductor is late for any cause in crossing the bridge down here, he telegraphs to whom?

A. The message comes in my name, and the chief train dispatcher gets it.

Q. The conductor telegraphs to you in your name, the chief train dispatcher getting it?

A. And compiles that report while I am in bed at night.

Q. The conductor states the cause of the delay across the bridge? A. Yes sir.

Q. Or the cause of the delay anywhere? A. Anywhere.

Questions by Mr. Stickney:

Q. The conductors are a good deal like that proverbial "Off again, on again, gone again," aint they? They count or make the easiest excuse of anything they can make.

A. No sir; we insist upon accuracy.

Q. Well, accurate; but it is a good deal more agreeable to them to say the Union Pacific was at fault than that they stopped and talked to their girl a little while on the platform at Council Bluffs, aint it?

685

A. No sir; that would be no record at all.

By Mr. Kellogg: Q. You depend upon the conductors for the reason of the delay?

A. We certainly must, and on our train sheet, as well.

Questions by Mr. Rich:

Q. I believe you said that of passenger trains the reports showed that you run about twenty-one in and out of Omaha from Council Bluffs, daily, in answer to question propounded by Mr. Stickney.

Mr. Stickney: No, he said twenty one passenger trains on that particular report, whether it covered a day or more; there is twenty one, I guess on that particular report, is the idea.

Mr. Rich: Perhaps that is right.—No I think not.

Q. How many passenger trains does the North Western run over the transfer, in and out of Omaha, daily?

A. I will count it right here for you. Shall I count aloud?

Q. No, just give us the results.

A. We run fourteen in here and eleven out of here, and two of those trains, as a rule, run in sections.

Q. Then I believe in answer to a question propounded to you, you said that the number of delays to these passenger trains as shown by these sheets, amounted to from four to six daily, and that that was a fair average. A. Yes.

Q. Will you look at the sheets of April 2nd to 20th, and

686 from that give the number of delays to all other trains on the entire division which you testified in answer to a question from Mr. Kellogg, was a fair average of daily delays.

A. Counting those on the 20th, all delays between Omaha and Council Bluffs.

Q. First, with reference to passenger trains?

A. I want to ask you—I want to understand you, just what you want. Is it the delays that we experienced going out of here or the delays all over the division?

Q. No, you have already answered that from four to six delays daily to your twenty five trains was a fair average, the trains moving between Omaha and Council Bluffs.

A. Yes sir.

Q. Will you give the delays as shown by those sheets to your passenger trains over the entire division?

Mr. Kellogg: At other places than those?

Mr. Rich: Well, the entire division, I said, between Council Bluffs and Omaha.

Mr. Kellogg: Yes, that is right.

A. Yes sir; we count here switching the train at Omaha, count that one, and number two—when I spoke of the other one, it was delays by trains ahead, we are speaking of.

Mr. Kellogg: Don't count them up and put all the counts in the record. Count them up first.

Q. Well, how many? A. Twenty.

Q. Without counting the other sheet, is twenty a fair average of delays reported on all the passenger trains running over the entire division of which you are superintendent, outside of between Council Bluffs and Omaha?

687 A. Well, I think it is a little heavier, than twenty. I think it was a little heavier—twenty.

Q. What would you think was a fair average?

A. About twelve.

Q. About twelve daily? Can you now state how many passenger trains daily operate on that entire division, how many daily passenger trains operate on that entire division, including the branch lines, daily?

A. Sixty three passenger trains.

Mr. Stickney: How many in and out of Omaha, did you say? A. I said there were fourteen in and eleven out.

Mr. Stickney: That makes twenty-five? That is to say averaging that there were delays on twenty-five trains, twenty delays on twenty-five trains.

Mr. Rich: This he said would be a fair average.

Mr. Stickney: Twelve in sixty-five on the outside.

Questions by Mr. Rich:

Q. Will you state the total miles over which those sixty-five passenger trains operate daily?

A. The total number of miles in our division?

Q. Yes sir.

A. Five hundred and twenty three.

Q. That includes branch lines?

A. Branch lines and everything.

By Mr. Kellogg:

688 Q. There are always more delays at terminal, are there not, than in the country?

A. At the large terminals, yes sir.

Q. In those reports of trains late which I called your attention to in the country outside of Omaha and Council Bluffs, which you refer to, they showed simply what points? Junction points or all stations?

A. Connecting terminals.

Q. Connecting terminals? Those that you read do not, but there are quite a number of stations at which the trains, passenger or freight, would be delayed? A. No sir.

Q. As a general thing they would be late at a great many stations where they were late at the Junction?

A. Certainly, our train sheet would show exactly how much delay at each station.

Mr. Kellogg: I want to offer in evidence exhibit 51. I offer in evidence exhibit 51 and it is admitted that it is a substantially correct analysis of the exhibits 16 to 22, inclusive, made by Mr. Clancy and Mr. Chase.

Paper marked exhibit 51 is hereto attached, or a true copy thereof, and made a part of this record.

689 W. J. C. Kenyon, recalled as a witness for further cross examination testified as follows:

Questions by Mr. Rich:

Q. Have you prepared a statement, or had prepared a statement since you were on the witness stand yesterday, showing the transfers by the Stock Yards Company of cars between all lines running into South Omaha, including the tenant lines of the Union Pacific? A. I have.

Q. Have you such a statement with you?

A. Yes sir. This statement shows the interchange between various lines through the Stock Yards Company from January 1st, 1905, to December 31st, 1905, inclusive. The Chicago

Great Western delivered to the C. B. & Q. miscellaneous grain and live stock, 30 cars; the Chicago Great Western delivered to the Missouri Pacific, 402 cars; the total deliveries by the Great Western to all lines at South Omaha handled by the Stock Yards Company were 432 cars. The Chicago & North Western delivered to the C B & Q 13 cars; to the Missouri Pacific 19 cars; and to the Union Pacific 2 cars; a total of 34 cars. The Chicago, Milwaukee and St. Paul delivered to the C. B. & Q. 18 cars, the Missouri Pacific 33 cars; a total of 51 cars. The Chicago Rock Island and Pacific delivered to the C B & Q 33 cars; to the Chicago Great Western 1 car, to the Fremont Elkhorn & Missouri Valley, 13 cars; to the Missouri Pacific 16 cars; to the Union Pacific 2 cars; total 65 cars. The C B & Q delivered to the Chicago Great Western 57 cars. To the C M & St. P 42 cars; to the Northwestern 6 cars; to the Rock Island 8 cars; total 113 cars. The Fremont Elkhorn & Missouri Valley delivered to the Chicago Great Western 360 cars, and to the Rock Island 1 car; total 361 cars. The O B & T Omaha Bridge & Terminal Co., delivered to the Great Western 7 cars; to the C M & St. P 1 car; to the Rock Island 6 cars; total 14 cars. The Missouri Pacific delivered to the Chicago Great Western 129 cars; to the Milwaukee 478 cars; to the Rock Island 5 cars; total 912. The grand total being 1682 cars, consisting of 489 cars of miscellaneous dead freight, 627 cars of grain, and 566 cars of live stock.

Q. Have you made a total of the number of cars delivered by the Great Western to all other roads and by all other roads to the Great Western?

A. Yes, that total is 986 cars out of a grand total of 1682 cars for that year.

Q. Will you give the monthly record from the statement of the number of cars of grain delivered by the Chicago Great Western to other lines and by other lines to the Chicago Great Western naming the lines?

A. The Chicago Great Western delivered to the C B & Q 29 cars of grain, and to the Missouri Pacific 58 cars of grain. The Chicago Rock Island and Pacific delivered to the Chicago Great Western 1 car of grain. The C B & Q delivered to the Chicago Great Western 52 cars of grain. The Fremont, Elkhorn and Missouri Valley delivered to the Chicago Great Western 360 cars of grain. The Omaha Bridge & Terminal Company delivered to the Chicago Great Western, 7 cars of grain. The Missouri Pacific delivered to the Chicago Great Western, 118 cars of grain. The total is whatever that figures up, 625 cars.

Witness excused.

691 A. Anderson, called as a witness on the part of the defendant in rebuttal, being duly sworn, testified as follows:

Re-direct Examination,

By Mr. Rich:

Q. Where do you live? A. Council Bluffs.

Q. You are employed by what road?

A. Chicago & North Western.

Q. In what capacity? A. Switch foreman.

Q. How long have you held that position?

A. About sixteen years.

Q. As such switch foreman, what are your duties?

A. To make up and break up trains, making trips daily with cars between South Omaha and Council Bluffs and Council Bluffs and South Omaha.

Q. Do you make any stated number of trips daily between Council Bluffs and South Omaha with a switch engine?

A. Make two round trips every day and sometimes three.

Q. In making those round trips, do you keep a record of them? A. I do.

Q. Have you any such record with you? A. I have.

Q. You may produce it, please. (book produced) What record have you?

A. Record from June 3rd, 1906 to June 20th, inclusive, 1906.

Q. You may state whether this is the record of what you call your bridge runs? A. Yes sir, it is.

692 Q. That is the runs from Council Bluffs to South Omaha and return? A. Yes sir.

Q. And this record shows the date of each run? A. Yes sir.

Q. And the numbers of the cars hauled in each run?

A. Yes sir.

Q. In case they are delayed from any cause in running from Council Bluffs to South Omaha, is that delay noted in this record? A. Yes sir.

Q. Whom is that entry made by? A. Myself.

Q. I now call your attention to the record of a run from Council Bluffs to South Omaha on the 3rd day of June, 1906 when you took a cut of 17 cars. You may state whether or not there was any delay on that run?

A. Yes sir, there was.

Q. A delay of how long?

A. Delayed thirty minutes, west end of Omaha yard.

Q. Is the reason of the delay assigned?

A. For block signal.

Q. Is there any other delay noted for that run? A. Yes sir.

A. Yes sir.

Q. How long was it, and what was the cause?

A. Delayed ten minutes between Omaha and South Omaha, Milwaukee bridge run.

Q. That is, the train that the Milwaukee was pulling over at the same time was ahead of you and in your way? A. Yes sir.

Q. You may turn to the record in that book of the 693 next run made? Was that on the same day?

A. Yes, sir, going east.

Q. Well, that is all right. You may turn to the next record of a run whether it was east or west and state whether it says same date or not? A. June 3rd going east.

Q. Was there any delay noted in that run? A. Yes sir.

Q. How long was it and what caused it?

A. Delayed forty minutes, switching at Omaha.

Q. Was that switching you were doing yourself?

A. Yes sir.

Q. Was there any delay in that switching, or was that just the time it took you?

A. No, if we had had a switch lead, it would not need to interfere with any main line, from the interlocking plant, we might have done the work in fifteen minutes instead of forty five.

Q. Turn to the next record you have of any bridge run.

A. Yes sir.

Q. What date is that? A. Fourth.

Q. Is there any delay indicated in that run, is there any delay noted in that run? A. No sir.

Q. That is from Council Bluffs to South Omaha.

A. Council Bluffs to South Omaha.

Q. Turn to the next record you have. Is that a bridge run east or west? A. Bridge run east.

694 Q. What is the date of it?

A. It is the 4th of June.

Q. June 4th, the present month? A. Yes sir.

Q. Are there any delays noted on that run? A. Yes sir.

Q. How long were they and what was the cause?

A. Delayed five minutes at transfer station, U P switch engine.

Q. Any other delay?

A. Delayed five minutes, transfer N W No. 5.

Q. What does that mean? North Western No. 5 was in your way? A. Yes sir. Standing in the depot.

Q. Turn to the next record. What is the date of that?

A. June 5th.

Q. That is a run in which direction, east or west?

A. From Council Bluffs to South Omaha.

Q. Any delay noted? A. No sir.

Q. Turn to the next run. What is the date of the next?

A. Sixth.

Q. Any further delays noted than those you have read of the run on the 5th? A. Yes sir.

Q. What were they, how long and what was the cause?

A. Delayed ten minutes, 6th street Omaha, U P switch engine.

Q. Turn to the next record. What is the date of that?

A. June 6th.

Q. Is that a run from Omaha to South Omaha?

A. From Council Bluffs to South Omaha.

Q. From Council Bluffs? Any delays noted on that run?

A. Delayed twenty minutes, west end Omaha yards.

695 Questions By Mr. Kellogg:

Q. Where? A. West end Omaha yard.

Q. That is the 6th street yard?

A. No that is the 11th street.

Q. Well it is the same yard, isn't it? A. Yes sir.

Q. It is called the 6th street yard isn't it?

A. I do not know what you would call it.

Questions By Mr. Rich:

Q. What caused the delay? A. Block signal.

Q. Turn to the next record.

A. That is the 6th, going east, June the 6th.

Q. Going east? Does your record show any delay?

A. Yes sir.

Q. What is it?

A. Delayed five minutes at transfer, No. 15.

Q. What transfer? A. Union Pacific transfer.

Q. Where is that? A. Passenger station.

Q. What further delay, if any?

A. Delayed ten minutes, switching in Omaha.

Q. What other delay if any? Switching where?

A. Omaha, 6th street. That is all.

Q. Turn to the next record. What is the date of the next?

696 A. June the 7th.

Q. Is that a run from Council Bluffs to South Omaha.

A. That is a run from Council Bluffs to South Omaha.

Q. Any delays noted on that date? A. Yes sir.

Q. Where are they?

A. Delayed forty minutes, west end Omaha yard, block signal.

Q. What else?

A. Delayed fifteen minutes between South Omaha and Omaha, Milwaukee bridge run.

Q. Have you another record of the same day?

A. Yes sir.

Q. What is that run? East or west? A. East.

Q. Any delays noted on that run? A. Yes sir.

Q. What is it?

A. Delayed fifteen minutes at South Omaha, Chicago Great Western bridge run.

Q. Turn to the next record. What is the date of that?

A. June the 8th.

Q. What was the run?

A. From Council Bluffs to South Omaha.

Q. Any delays noted on that run? A. Yes sir.

Q. What are they?

A. Delayed fifteen minutes at transfer place, U P switch engine. Delayed ten minutes east end Omaha yard, block signal.

Q. Does your record of the return run from South Omaha to Council Bluffs show any delay?

697 A. No sir.

Q. Turn to your next record. What is the date of it?

A. June 10th.

Q. What is that run?

A. From Council Bluffs to South Omaha.

Q. Does it show any delays? A. Yes sir.

Q. What were they?

A. Delayed twenty minutes at Union Pacific transfer, U P switch engine.

Q. Turn to the next record. A. June the 10th.

Q. What is that run? A. Delayed one hour.

Q. No, what was the run? Council Bluffs to South Omaha or otherwise?

A. Why there were no delays on that run, June the 10th; if was afternoon run, no delay on there.

Q. Turn to your next record.

By Mr. Kellogg:

Q. That one hour was a mistake?

A. Yes, that was in our independent yard, switching yard.

Q. That was not on the Union Pacific lines at all?

A. No sir.

Q. That is a mistake? A. That is a mistake.

Questions by Mr. Rich:

Q. What was the next one?

A. June the 11th.

698 Q. A run from where?

A. From Council Bluffs to South Omaha.

Q. Does it show any delays?

A. Yes sir.

Q. What were they?

A. Delayed ten minutes, east end Omaha yards, block signal.

Q. What else?

A. Delayed sixty minutes west end Omaha yards, block signal.

Q. Turn to your next record.

A. Returning light from South Omaha same date, delayed thirty minutes, east end Omaha yard, block signal.

Q. What is the next record; what date?

A. June 11th.

Q. What was the run? A. Going east.

Mr. Kellogg: Same one there?

Mr. Rich: No.

Mr. Kellogg: This is another one.

Mr. Rich: Yes sir; going west.

A. Going east; delayed ten minutes, South Omaha U S Yard switch engine.

Q. What is you next record? A. June 11th.

Q. What was that run? A. Delayed fifty-five minutes.

Q. No, what was the run?

A. Going west.

Q. Any delays shown? A. Yes sir.

699 Q. What were they?

A. Delayed fifty-five minutes between Council Bluffs and Omaha, U P work train.

Q. What is your next run? A. June 12th.

Q. What was the run?

A. From Council Bluffs to South Omaha.

Q. What are the delays, if any?

A. Delayed ten minutes at west end of Omaha yard, block signal.

Q. What is your next run? A. June 12th.

Q. Which direction? A. Going east.

Q. Any delay. A. No delay.

Q. What is the next record?

A. June 12th, going west; no delay.

Q. Turn to your next? A. June the 13th.

Q. What was the run? A. Going west.

Q. Any delays? A. Yes sir.

Q. What were they?

A. Delayed forty minutes between Council Bluffs and Omaha, U P work train.

Q. Any other delay?

A. Delayed five minutes at the west end of Omaha yard, block signal.

Q. What is your next run?

700 A. June the 13th, going east.

Q. Any delays, or not? A. Yes sir.

Q. What were they?

A. Delayed five minutes at South Omaha, U P passenger train No. 22 delayed fifteen minutes east end Omaha yard, block signal.

Q. Go ahead.

A. Delayed ten minutes at the Union Pacific transfer, U P No. 22 unloading baggage on the main line.

Q. What is your next record? A. June the 13th.

Q. What was that run? A. Coming east.

Q. Any delays noted? A. Yes sir.

Q. What were they?

A. Delayed thirty minutes, N. & W. Junction, which is the North Western Junction at Summit, for orders from the train dispatcher to enter upon Union Pacific tracks.

Q. What is your next?

A. Delayed ten minutes 13 street Omaha U. P. switch engine. Delayed ten minutes east end of Omaha yard, block signal.

Q. What is your next record? A. June the 14th.

Q. What was the run? A. Going west.

Q. Any delays noted? A. No.

Q. What is your next record? A. June 14th.

Q. What was the run? A. Going east.

701 Q. Any delays noted? A. Yes, sir.

Q. What were they?

A. Delayed ten minutes Chicago Great Western bridge run, and U. P. passenger train at South Omaha. Delayed ten minutes east end Omaha yard, block signal.

Q. Did you make any other run on the same day?

A. June 14th, going west.

Q. Any delays? A. Yes sir.

Q. Read them?

A. Delayed eight minutes between Council Bluffs and Omaha, busted air hose. Delayed 50 minutes west end Omaha yard, block signal.

Q. What is your next record? A. June 14th.

Q. What was that run? A. Going east no delays.

Q. What is the next record? A. June the 15th.

Q. What is that run? A. Going west.

Q. Any delay? A. No delay.

Q. What is your next record? A. June the 15th.

Q. Going in which direction? A. East.

Q. Is there any delay? A. Yes sir.

702 Q. What were they?

A. Delayed twenty minutes, switching at South Omaha.

Q. What caused the delay?

A. U. P. and North Western cars mixed up on one track.

Q. What is the next delay?

A. Delayed twenty minutes, east end Omaha yard, block signal.

Q. What is your next record? A. 16th.

Q. Going which direction? A. Going west.

Q. Any delay? A. No delay.

Q. What is your next record? A. 16th.

Q. Going which direction? A. East.

Q. Any delay? A. Yes sir.

Q. What were they?

A. Delayed fifteen minutes at South Omaha by orders.

Q. Anything else?

A. Delayed fifty-five minutes at 6th street, Omaha, U. P. freight train and block signal, and east end of Omaha yard.

Q. Turn to your next record. What is the date of it?

A. The 17th.

Q. Going which direction? A. Going west.

Q. Any delay? A. Yes sir.

Q. What was it?

A. Delayed thirty minutes west end Omaha yards, block signal.

703 Q. What is your next record? A. 17th.

Q. Going which direction? A. Going east.

Q. Any delay? A. Yes sir.

Q. What was it?

A. Delayed twenty minutes for orders at South Omaha.

Q. Any further delay on that day? A. No.

Q. Turn to your next record? A. 18th.

Q. Going in which direction?

A. From Council Bluffs to South Omaha.

Q. Any delay noted? A. Yes sir.

Q. What was it?

A. Delayed twenty minutes west end Omaha yard, block signal.

Q. Turn to your next record? A. 18th.

Q. What run? A. Going east.

Q. Any delays noted? A. Yes sir.

Q. What were they?

A. Delayed ten minutes at South Omaha, Milwaukee bridge run; delayed fifteen minutes at South Omaha for orders. There is one more run going east same day.

Q. Any delays noted on that run?

A. Yes sir. Delayed twenty-five minutes, switching at South Omaha yard.

704 Q. Turn to your next record. A. 19th.

Q. Which direction? A. Going west.

Q. Any delays noted? A. Yes, sir.

Q. What were they?

A. Delayed twenty-five minutes west Omaha yard, block signal.

Q. Turn to your next.

A. Same day, going west, delayed twenty-five minutes west end Omaha yard, block signal.

Q. Turn to your next record.

A. Same date, going east; delayed fifteen minutes, switching at South Omaha, North Western and U P cars mixed on one track. Delayed five minutes east end Omaha yards block signal; delayed twenty-five minutes east end Omaha yards block signal.

Q. What is your next record? A. 19th.

Q. What direction? A. Going west.

Q. Any delays noted? A. No, sir.

Q. Next record? A. 20th, same month.

Q. Going in which direction? A. West.

Q. Any delays noted? A. Yes sir.

Q. What are they?

A. Delayed 30 minutes, west end Missouri river bridge.

Q. What is your next record?

705 A. 20th, same month, going east.

Q. Any delays?

A. Delayed ten minutes at transfer, No. 15.

Q. What is your next record?

A. 20th, going west, same day.

Q. Any delays noted?

A. Delayed one hour, west end Omaha yard, block signal.

Q. What is your next record? A. Going east.

Q. On what day? A. Same day.

Q. That is yesterday, is it not? A. Yes sir.

Q. Any delays noted? A. No delay.

Q. How long have you been making these bridge runs as engine foreman and keeping a record of them?

A. About seven years.

Q. Have these delays increased within that period of time?

A. Yes sir.

Q. You may state whether or not the delays that you have read from your record for the month of June, 1906, are a fair average of the delays which you have experienced, say for the months of January, February, March, April and May of this year? A. Yes sir, about the same.

Cross examination,

By Mr. Kellogg:

Q. You have had these delays for seven years, have you not?

A. No sir.

706 Q. You have had delays during the whole seven years, haven't you? A. Not as much, not as many.

Q. Haven't you had delays during the seven years?

A. I have.

Q. At the west end of the Omaha yard? A. No sir.

Q. You have had no delays in the seven years in the west end of the Omaha yard? A. Not as much.

Q. Haven't you? Haven't you ever had delays in the seven years at the west end of the Omaha yard? A. Yes sir.

Q. And at the east end of the Omaha yard? A. Yes sir.

Q. According to your statement, that seems to be the most delays you had? A. Yes sir.

Q. Most all of them occurred at either the east or west end of the Omaha 6th street yard? A. Yes sir.

Q. Many of them are from switching into the yard?

A. No sir.

Q. There is switching at either end of the yard, and on the main track? A. Yes sir.

Q. You cannot switch about a train in—put a train in or switch a train out of the east end of the yard, without running it on the bridge, can you? A. No sir.

707 Q. And most of the delays occur from switching in these yards, don't they? A. No sir.

Q. What do they occur from?

A. They occur from so many trains in and out of Omaha that they could not possibly let a man out there.

Q. They are in the yard, aren't they? You say they occurred at the west end, or east end of the Omaha yard; they must occur in the yard? A. Sure.

Q. That is what I asked you, I mean switching any train, not your own train. Most of the delays in this 6th street yard occur from switching in that yard by somebody, don't they?

A. No sir.

Q. They do not? A. No sir.

Q. They occur by what?

A. They occur by passing so many trains on the line that they cannot let a switch train out there any time you are ready to go.

Q. That yard is a busy yard, isn't it? A. Yes sir.

Q. There is a great deal of switching done in it?

A. Yes sir.

Q. Many trains broken up there? A. Yes sir.

Q. And switched by various companies? A. No sir.

Q. Were you switching for the Union Pacific then?

A. Yes sir.

708 Q. Your switching delays traffic there doesn't it?

A. Not to speak of. They are most of the time packed so that they aint got time to let a man out of there.

Q. What is the matter with the yard?

A. There is nothing the matter with the yard, the yard is all right.

- Q. The yard is all right? It is the traffic that is in it?
A. Not in the yard, on the main line.
- Q. The main line runs through the yard? A. It does, yes.
- Q. You say switching in the yard on the main line right through don't interfere with the main line at all?
A. Not to speak of; I couldn't make any complaint of being delayed from the switch engines working down there.
- Q. You could not take a car out at the east end or put it in at the east end without blocking the main track? A. No sir.
- Q. Every time you switch out or into that yard at the east end, you block the main track? A. Yes sir.
- Q. And that delays? A. Yes sir.
- Q. It is delayed by switching, isn't it?
A. No sir, you don't require to go out and switch an hour.
- Q. I am not talking about hours; I am talking about delays. You say it has increased during seven years?
A. Yes, yes, sir.
- Q. There were delays seven years ago? A. O, yes.
- Q. In making these runs? A. Yes sir.
- 709 Q. Similar delays to these? A. No.
- Q. Not similar to these? All different? A. Yes.
- Q. No such delays as these at all? A. No sir, never.
- Q. Never was delayed at the west end of the 6th street yard seven years ago? A. O, yes.
- Q. Then there were similar delays?
A. Nothing like these delays we are getting now.
- Q. I asked you if they were the same kind of delays?
A. Yes sir.
- Q. There were similar delays to this seven years ago, weren't there? A. Well, not as long delays.
- Q. I asked you if there were a similar kind of delay, the same kind of delays? A. Yes.
- Q. From the same causes? A. Why, yes, partly.
- Q. Did you keep a record of those? A. Yes sir.
- Q. Can you remember them now? A. No sir.
- Q. Then during all that seven years there have been more or less delays? A. Yes sir.
- Q. Always are in every terminal, aren't there?
A. Yes sir.
- 710 Q. When you run a switch engine to start from Council Bluffs to go to South Omaha, you do not expect to speed right through without any stops at all? A. Yes sir.
- Q. You do not expect to have any stops? A. No sir.
- Q. Run right straight through from Council Bluffs clear to South Omaha without stopping?
A. We have done it many a time.
- Q. You have done it many a time? A. Yes sir.
- Q. Do it now, too, don't you? A. Not once in fifty times.

Q. You have always been delayed more or less?

A. Not always.

Q. Used to be delayed not at all? A. O, yes.

Q. You say your records seven years ago show no delays whatever? A. O, no.

Q. They do not? A. No sir.

Q. In other words, you swear that seven years ago your records do not show one single delay?

A. No sir; I would not say that.

Q. Well, then they do show delays, don't they? A. Yes sir.

Q. Then you were mistaken when you said they did not show delays? A. I misunderstood you if I said it.

Q. Well then, you should be careful. How many trains do you move—how many movements did you make between Council Bluffs and South Omaha on any part of it during 711 a day? A. Two round trips a day, sometimes three.

Q. Sometimes three? Is that the only trains the Chicago and Northwestern have? A. Why no, that is not all.

Q. They have other trains, do they? A. Yes sir.

Q. They have other trains between Council Bluffs and South Omaha, don't they? A. Yes sir.

Q. You have delays in these yards in Council Bluffs, don't you? A. Why, yes sir.

Q. There are delays in all freight yards, aren't there?

A. Yes sir.

Q. You stated that you were delayed from switching forty five minutes at the Omaha yard? A. Yes sir.

Q. You were switching there forty five minutes?

A. I was trying to switch there forty five minutes.

Q. You were delayed by switching?

A. I was delayed by switching, yes sir.

Q. Switching does delay you now, doesn't it? A. Yes sir.

Q. Another time you state you were delayed by switching there, thirty minutes? A. Omaha yard?

Q. Yes? A. Omaha or South Omaha?

Q. Omaha. A. That might all be.

Q. You were delayed by switching then?

A. I was doing the switching myself; I was not delayed by another engine.

712 Q. You state another place where you were delayed switching—where you were delayed twenty minutes, switching in the South Omaha yards? A. Yes sir.

Q. Caused by what?

A. Because our cars and Union Pacific cars were all mixed up on one track.

Q. You had to sort them out? A. Yes sir.

Q. You call that a delay? A. Yes sir.

Q. In other words you could have done it quicker if somebody had sorted them out for you first?

A. We are not supposed to sort out.

Q. If somebody else had sorted them out, it would take the same time?

A. They always was sorted out until late years when they got blocked up.

Q. If somebody had sorted them out, it would have taken time? A. No sir.

Q. Somebody else could have sorted them out without taking time could he?

A. Cars are not properly delivered until they are delivered on one track by themselves.

Q. That is the fault of the delivery, isn't it? A. No sir.

Q. Whose fault was it?

A. It was the fault because they aint got no room on there.

Q. Got no room on the side tracks? A. No sir.

713 Q. It is on the side tracks?

A. Got to double two roads on one track.

Q. They put two roads on one side track? A. Yes sir.

Q. That is the fault of the side track? A. No sir.

Q. It is not? Whose fault is it?

A. It is the fault they aint got room enough.

Q. It has room enough on the side track, hasn't it?

A. No sir.

Q. The fault is with the switching? Will you explain what the trouble is? A. Yes sir.

Q. You seem to have some reason for knowing where the fault is. Let us know? A. I can explain that easy.

Q. How is that?

A. They have five roads and use three tracks, and instead they should have five tracks.

Q. Side tracks? A. Yes sir.

Q. The fault is that there are not side tracks, isn't it?

A. Yes sir.

Q. The fault is not that there are not main tracks enough, is it? A. No, not main running tracks, main line.

Q. Then the delays, these that you read off, were either at the east end or west end of the 6th street Omaha yard?

A. Might be, yes sir.

714 Q. Always,—and the other delays run the same way? A. What other days?

Q. Other days that you did not read off?

A. I read off all the delays.

Q. You read off all the delays? A. During this month.

Q. During this month? The other months correspond with this month since January? A. Yes, about.

Q. And these delays are mostly at the east end or west end of the Omaha 6th street yard, aren't they? A. I presume.

Q. They were delays there last year too, weren't there?

A. Yes, there were some.

Q. Delayed there year before last, weren't they? A. Yes.

Q. And the year before that? A. Yes.

Q. And the year before that? A. Yes sir.

Q. Do you know how many? A. No sir.

Q. Do you now how many there were last year?

A. No sir.

Q. Do you know how many there were the year before?

A. No sir.

Q. But there were delays? A. Yes sir.

Q. A good many?

A. Well, not so many as we are having now.

715 Q. During the last month they have been working bridge trains, haven't they? A. Yes sir.

Q. Repairing the bridge? A. Yes sir.

Q. And there have been delays from those work trains, haven't there? A. Yes.

Mr. Kellogg: That is all.

Re-direct Examination,

By Mr. Rich:

Q. You said that one trouble at South Omaha was that they had only three tracks to do the work on where they should have five. You refer to those tracks just west of the Union Pacific west bound line and south of the Stock Yards cross over do you? A. Yes sir.

Q. And conditions have grown worse since they have turned one of those tracks over to the Stock yards, have they?

A. Yes sir.

Witness excused.

Mr. Rich: The defendant offers in evidence, exhibits 53 to 62 inclusive.

Mr. Kellogg: Objected to as immaterial.

(Exhibits being papers marked 53 to 62 inclusive are hereto attached or true copies thereof, and made a part of this record.)

Mr. Rich: That is all.

The defendant rests.

716 A. B. Stickney, recalled as a witness upon the part of the plaintiff, testified as follows:

Direct Examination,

By Mr. Kellogg:

Q. You have heard the testimony about delays here and also have looked over the letters which are introduced from Mr. Cornelison, the Superintendent of the Great Western, showing the deliveries to our passenger trains have you?

A. Yes.

Q. Are those delays such as are incident to all terminals in large cities?

A. Yes, they are incident to all large terminals that I have been acquainted with.

Q. You have been railroading for thirty years, haven't you?

A. Yes sir.

Q. And are acquainted with a great many large terminals?

A. Yes.

Q. And is there anything peculiar about the delays here that you know of?

A. No, I have not seen anything that is peculiar about it. A good many of them can be rectified by a little more thought or courtesy between the men themselves, but that is a thing we are confronted with in some places. Take it down at Oelwein, where our three roads come together, we have a very large switching yard there, and the trains are frequently delayed; one fellow says he has the right of way, and the other fellow swears he has the right of way, and they stand there and swear about it, instead of either one getting out of the way.

717 Q. Is it customary at terminal points to report these complaints? A. Always.

Q. To Superintendents, so that they may rectify them, if possible? A. Yes sir.

Q. It is the usual way and the customary way of doing business, same as shown here?

A. Always.

Q. Such delays are incident and common to such terminals?

A. Yes.

By Mr. Rich: Q. With an increase of traffic over a given number of tracks, however, these delays naturally increase, do they not?

A. O yes. They increase some.

Mr. Kellogg: That is all.

Witness excused.

The plaintiff rests.

With this the testimony was closed.

718 And now on this sixth day of June A. D. 1906, at the hour of 5 o'clock P. M. at the office of the Law Depart-

ment of the Union Pacific Railway Company, in Omaha, Douglas County, Nebraska, and within the said District of Nebraska, by consent of the parties the further taking of testimony in this case is adjourned until the hour of 9:30 o'clock A. M. on the seventh day of June, 1906, at the Federal Court Room in the post-office building in the city of Omaha, Douglas County, Nebraska, and within the said district of Nebraska.

[Seal]

MAY H. FINLEY,

Examiner in Chancery for the United States
Circuit Court of the District of Nebraska.

719

And now on this Eighth day of June A. D. 1906, at the hour of 5:30 o'clock P. M. at the Federal Court Room in the Postoffice Building in Omaha, Douglas County, Nebraska, and within the said district of Nebraska by consent of the parties the further taking of testimony in this case is adjourned until the hour of 10 o'clock A. M. on the 19th day of June, 1906, at the Federal Court Room in the postoffice building in the city of Omaha, Douglas County, Nebraska, and within the said district of Nebraska.

[Seal.]

MAY H. FINLEY,

Examiner in Chancery for the United States
Circuit Court of the District of Nebraska.

720

United States of America,
District of Nebraska,
State of Nebraska,
County of Douglas—ss.

I, May H. Finley, Examiner in Chancery of the United States Circuit Court in the District of Nebraska, do hereby certify that the foregoing testimony in the above entitled cause was taken before me at the times and places in the record thereof indicated; that before testifying, each of the several witnesses was by me severally and duly sworn to tell the truth, the whole truth and nothing but the truth; that said testimony was taken in shorthand, and was reduced to typewriting by myself, and that the foregoing is a complete and correct record of all the proceedings had upon the above hearing.

[Seal]

MAY H. FINLEY,

Examiner in Chancery for the United States Court of the District of Nebraska.

Fees and Costs of Taking Testimony:

To Swearing 26 Witnesses

\$ 2.60

To 1953 folios at 20c per	390.60
" Binding Depositions	.75
" Examiner's Certificate	.50

\$394.45

The above costs, fees and expenses have been paid in full
by_____

Examiner in Chancery of the United States Circuit Court for
the District of Nebraska.

Endorsed: Filed Jul 6 1906. Geo. Thummel,
Clerk.

721 On the 24th day of January, 1907, Exhibits Nos. 6, 7,
8, 9, 10, 11, 12, 13, 14, 15, 23, 24, 25, 26, 27, 28, 29, 30,
31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48,
49, 50, 51, 53, 54, 55, 56, 57, 58, 59, 60 and 61, referred to in the
Bill of Exceptions were filed in said case, which said Exhibits
are in words and figures following to-wit:

722 Exhibit 6.

Form 159-5-22-03.

Union Stock Yards and Railroad Switching Tariff in Effect
May 1st, 1896.

The Union Stock Yards and Railroad Switching rates are
given below: All cars delivered to this Company are received
only upon condition that there is room for them upon the
tracks of the firms to whom they are consigned.

Live stock Received from or delivered to a Connecting Line
50 cents per Car.

All commodities delivered to Connecting Lines \$2.00 per
Car, except in Cinders, Rubbish and Cars loaded for Omaha
proper, on which switching will be charged \$1.00 per Car.

All Commodities received from Connecting lines for indus-
tries located on tracks of this Company \$1.00 per car.

All Commodities Switched from the Transfer track of one
railroad direct to transfer track of another, \$1.00 per car; such
cars when empty to be returned free.

All Empty Cars switched from the transfer tracks of one
railroad direct to the transfer tracks of another 50 cents per
car.

Local Switching. When firms require switching of cars
from one part of their yard to another or from the tracks of

one firm to those of another, the charge will be \$1.00 per loaded an 50 cents per empty car.

1. All cars delivered to this Company (excepting Live stock) must be properly tagged; cars will not be taken from transfer tracks that are not tagged.

2. No cars must be used for any line to which they do not belong, without permission.

3. In no case will tags or switching orders be filled out or placed upon cars by employees of this Company.

723 4. Any orders taken by this Company for a change in the consignment of a car after it has been moved, and before it has reached its destination as at first consigned will be subject to a charge of \$1.00 for each loaded car and 50 cents for each empty car. Requests for reconsignment, if made by telephone must be confirmed in writing.

5. When empty cars are required they must be ordered either by letter or telephone of the Assistant Superintendent. (Telephone No. 363.)

6. Empty cars when set in on orders, will not be taken out either loaded or empty without a regular switching order.

7. No [employ] of this Company is authorized to make any reduction in rates for switching, or expected to receive pay from our patrons for doing their work.

8. Double switching rates required on all cars with more than two trucks, also upon engines and empty passenger equipment.

W. N. Babcock,	James L. Paxton,	W. P. Campbell
General Manager.	Superintendent.	Assistant Super- intendent.

Endorsed: Filed Jan 24 1907. Geo. H. Thummel,
Clerk.

724

Exhibit 7.

At conference held in Omaha, Monday April 27th, 1896, between representatives Messrs. W. A. Paxton, and W. N. Babcock, of the Union Stock Yards & Railroad Company of South Omaha and the Union Pacific Railway, represented by Messrs. E. Dickinson and J. A. Munroe; F. E. & M. V. R. R. by Mr. A. H. Merchant; B & M R. R. R. in Nebraska by G. H. Crosby, following memorandum was agreed to, effective May 1st, 1896, subject to notice of sixty days of desire on part of any one to withdraw from the same;

1. The Union Stock Yards Company to handle all loaded cars of live-stock received from or delivered to the several railroads at a switching charge of fifty cents per car. No charge to be made for empty cars received for loading or returned empty.

2. No charge to be made for switching through live-stock that is covered by agreed through rates.

3. Charge for loading or unloading not to exceed fifty cents per car, but not to be higher than charges made by Kansas City Stock Yards Company.

4. On all outbound shipments of dead freight (with exception of cinders and rubbish) loaded by packers, including shipments of packing house product, dressed beef, etc., a switching charge of two dollars per car to be made. This not to apply on cars destined to Omaha, on which the maximum switching charge will be one dollar per car.

5. On cinders and rubbish loaded by packers a charge of one dollar a car for switching to connecting lines.

6. On all loaded cars received from connecting lines for industries located on tracks of the Union Stock Yards,
725 Company, switching charge of \$1.00 per car to be made; no charge for return of empty cars.

7. No charge to be made for switching cars loaded with material or supplies for the use of the Union Stock Yards Company, nor for the return of empty cars.

8. Loaded cars switched from transfer track of one railroad direct to transfer track of another, switching charge to be \$1.00 per car, empty car returned free.

9. No charge for holding loaded cars on stock yards tracks.

10. No charge for storing such a supply of empty cars as are necessary for current business in connection with Stock Yards Plants and Industries located on tracks of the Union Stock Yards Company.

It is understood that the switching, loading and unloading charges named above are to be absorbed by the Railroad Companies in the event that similar charges are absorbed at Kan-

sas City. In the event however of Railroad Companies not absorbing switching charges at Kansas City, charges will not be absorbed at South Omaha.

UNION STOCK YARDS COMPANY,
W. N. BABCOCK, General Manager.

UNION PACIFIC RAILWAY,
J. A. MUNROE, Freight Trf. Mgr.

FREMONT, ELKHORN & MO. VALLEY R. R.
A. H. MERCHANT, Asst. G. F. Agent.

BURLINGTON & MISSOURI R. R. R.,
GEO. H. CROSBY, G. F. A.

(Copy.)

Endorsed: Filed Jan. 24, 1907. Geo. H. Thummel, Clerk.

Exhibit 8.

726

G. M. O. File.
No. 1764.

This Agreement, Made and entered into this 27th day of December, A. D. 1904, by and between the Mason City and Fort Dodge Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa, party of the first part, and Union Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, party of the second part; witnesseth that,

Whereas, the Mason City and Fort Dodge Railroad Company has acquired a tract of ground, extending southwardly and southwesterly from a point near Martha Street in the City of Omaha and adjoining the right of way of Union Pacific Railway Company upon which tract of ground the party of the first part proposes to lay tracks, along which certain elevators and industries are proposed to be constructed and located; and

Whereas, said party of the first part desires a connection between its tracks so to be constructed upon said tract of ground and the tracks of the party of the second part; and,

Whereas, the said party of the second part is willing that said connections shall be made under the terms and conditions hereinafter set forth:

Now therefore, it is agreed by and between the parties hereto that said party of the second part will construct or provide along and upon its said right of way in the City of Omaha, a track from the point of its present connection with the tracks of the party of the second part at or near Twentieth Street, southwardly to a suitable connection with the said tract of ground of the party of the first part and the tracks to be laid

727 thereon, at or near Martha Street, as shown and indicated on the plat attached hereto and made a part hereof, marked "Exhibit A."

Said party of the second part further agrees that the said party of the first part shall have the joint use and occupation with the party of the second part of the said track for the operation of its business and the use of its locomotives, trains and cars, and said party of the second part shall maintain and keep said track in repair, and keep the same open for the use of the party of the first part as hereinabove provided, at its own cost and expense. Said track between the junction near the west side of Twentieth street and the westerly terminus near the west side of Martha street, shall not be used by the party of the first part for switching cars to or from industries located upon or adjacent to said track between said points, nor by either party as a standing place for cars. Each party assumes all liability for loss of or damage to property, and for injuries to persons as to its own trains, property and employees.

The operation of all engines, cars and trains on said tracks, shall be under the rules and regulations of Union Pacific Railroad Company, with priority of right in the movement of engines, cars and trains to those of Union Pacific Railroad Company.

Said party of the second part further agrees to put in and make the connection with the said tracks as hereinbefore provided, at its own cost and expense.

In consideration whereof, the said party of the first part agrees to pay to said party of the second part, as a fixed rental for the use of said track and connections, the sum of Eight Hundred (\$800.00) per annum, payable monthly.

728 That because of the fact that the party of the first part desires the immediate use of said tract of land hereinabove referred to, and desires at once to have a convenient connection for the purpose of hauling material on said tract of ground, the said party of the second part agrees that as soon as it can be done, it will make a temporary connection, at or near Martha Street between its present tracks and the said tract of ground and the said tracks to be constructed thereon, and to permit the party of the first part to use said temporary tracks and connection for said purpose.

It is further agreed by and between the parties hereto that this agreement is made subject to the rights of the parties hereto that this agreement is made subject to the rights of the parties hereto, which may hereafter be determined in the case of Union Pacific Railroad Company, Appellant, against the Mason City and Fort Dodge Railroad Company, Appellee, now pending in the Supreme Court of the United States, and that

this agreement shall in no way affect said cause and that neither party hereto, by entering into this agreement, waives any rights asserted in said cause, and that this agreement shall be without prejudice to any of said rights.

In witness whereof, the parties hereto have executed this agreement in duplicate, by their respective General Managers, thereunto duly authorized the day and date first above written.

**MASON CITY AND FORT DODGE
RAILROAD COMPANY.**

By (Signed) A. B. Stickney,
Its President.

In presence of W. R. Kelly,

UNION PACIFIC RAILROAD COMPANY,

By (Signed) A. L. Mohler,
Its General Manager.

In presence of W. R. Kelly.

Endorsed: Filed Jan 24 1907 Geo. H. Thummel, Clerk.

Exhibit 9.

Chicago Great Western Railway
Office of General Traffic Manager.
Metropolitan Opera House Building.

P. C. Stohr,
General Traffic Manager.

St. Paul, Minn. Nov. 22, 1904.

J. A. Munroe, Frt. Traf. Mrg.,
Union Pacific R. R. Omaha, Neb.

Dear sir:—

This Company has completed its freight house and team tracks in the city of Omaha and will now handle Omaha traffic via its own rails.

This brings up the question of carload freight for industries on your tracks. In your tariff dated November 23, 1897, you give varying rates for switching per car in the four districts you have made for grading the rates. I understand you switch carload freight for other railroads under this tariff and we wish to avail ourselves of the same rates; and I have notified Mr. Parkhurst, our General Agent at Omaha, that hereafter we will give you carload freight for industries on your tracks at the rates named in this tariff.

We of course will discontinue the use of your team tracks and freight house under your local tariff from Council Bluffs to Omaha now that we have our own facilities in the city of Omaha.

Yours Truly,
P. C. STOHR,
G. T. M.

O. K. & Sherlock so instructed—based on conference with Messrs. Mohler & Baldwin 11-26-04. J. A. M.

The following stamp is stamped on face: "Union Pacific Gen'l Freight Office, Overland Route, Nov. 25, 1904, Omaha, Neb."

Endorsed: Filed Jan 24 1907. Geo. H. Thummel, Clerk.

Exhibit 10.

G. M. O. File
No. 19031

Chicago Great Western Railway Co.

Office of President.

St. Paul, Minn. April 6, 1906.

A. L. Mohler, Esq.,
General Manager, Union Pacific Railroad Co.,
Omaha, Nebraska.

Dear Sir:—

The Chicago Great Western Railway Company has demanded of the Chicago & North Western Railway Company that it shall deliver all carload freight which it shall [being] into Omaha consigned to points on the Chicago Great Western Railway Company either at Omaha or elsewhere, to the Chicago Great Western Railway Company on its tracks and at its yard located on the west side of the right of way of the Union Pacific Railroad Company extending from a point near the south line of the city of Omaha northwardly to a point near Martha Street, over the connecting line between said yards and the main track of the Union Pacific Railroad Company.

I desire to know if the Union Pacific Railroad Company denies the right of the Chicago & North Western Railway Company to make such delivery.

Yours Truly,
A. B. STICKNEY,
President.

J. M. B.

The following stamps are stamped on face: "Union Pacific R. R. Co. Vice President and General Manager, Apr-7-1906. Omaha, Neb." "Union Pacific R. R. Co. Vice President and General Manager Apr 7 1906 Omaha, Neb.

Endorsed: Filed Jan 24 1907. Geo. H. Thummel, Clerk.

Exhibit 11.

732

Agreement.

Dated August 7th., 1900.

Union Pacific Railroad Company,
with

Chicago, Burlington & Quincy Railroad Company.
Trackage,

Gilmore Junction and South Omaha.

Date—Parties.

Articles of agreement, made and entered into, in duplicate, this 7th day of August, A. D. 1900, by and between Union Pacific Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Utah (hereinafter called the Pacific Company,) party of the first part, and the Chicago, Burlington & Quincy Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Illinois and other states, (hereinafter called the Burlington Company,) party of the second part.

Witnesseth:

Article I.

Term—Connection with and use of tracks—Description of tracks and premises.

Section I. In consideration of the rents, charges and agreements, herein set forth, to be by said Burlington Company well and truly paid, kept and performed, the said Pacific Company hereby lets and grants to said Burlington Company, for the term ending June 30, 1949, unless sooner terminated as provided by Section 2, Article II., hereof, the right to connect the railroad track now owned and occupied by it, across the right-of-way of, and to a connection with, the main double tracks of the Pacific Company, at the point hereinafter designated, 733 and to run, manage, and operate the trains, engines and cars of said Burlington Company, in the transaction of its business as a common carrier, over, along and upon that part and so much of the double main tracks of the Pacific Company, including the use of the now existing passing-tracks of the Pacific Company, between the points below described:

Commencing at the junction of the track or tracks now occupied by said Burlington Company, at or near Gilmore Junction, with the double main tracks of the Pacific Company, in the southeast quarter (S. E. $\frac{1}{4}$) of section twenty-seven (27), township fourteen (14) north, range thirteen (13) east of the sixth principal meridian, about 1,545 feet north of, and 1,185 feet east of the southwest corner of said southeast quarter of section twenty-seven, and at a point indicated by the letter "F" on the map of the premises embraced in this agreement, hereto attached, marked "Exhibit A," and made a part hereof; running thence northerly along and upon said track or tracks of the Pacific Company, as indicated upon said map by the yellow lines, to a connection with the system of tracks of the Union Stock Yards Company, at South Omaha, Nebraska, nearly opposite to the present passenger station of the Pacific Company, and at a point in the southeast quarter (S. E. $\frac{1}{4}$) of section four (4), township fourteen (14) north, range thirteen (13) east of the sixth principal meridian, about 1,608 feet north, and 1,202 feet west of the southeast corner of the southeast quarter of said section four (4), and which is indicated by the letter "G" on said attached map, a distance of four and fifty-hundredths (4.50) miles; also the use of the now existing side-tracks and switches of the Pacific Company, shown on said "Exhibit A" in yellow lines, and described as follows: 734

(a) Said side tracks and switches at Avery, being of the aggregate length of ninety-one hundredth (0.91) miles.

(b) Said side-tracks and switches of the Pacific Company at Albright, being of the aggregate length of ninety-five hundredths (0.95) miles.

Compensation; to be paid monthly. Expense of constructing viaduct or tunnels to be added to valuation of premises.

Sec. 2. For such occupation and use of the tracks, and for the rights and privileges thereon, herein granted, the Burlington Company covenants, promises and agrees, to pay to the Pacific Company, monthly, during said term, upon bills rendered therefor by the Pacific Company:

(a) A sum equal to one-twelfth of thirty three and one-third per cent. of five per cent. of the agreed valuation of said leased premises, which is herein fixed at the gross sum of three hundred and twenty-five thousand dollars (\$325,000), being the actual sum of four hundred and fifty-one dollars and thirty-nine cents (\$451.39).

(b) A proportion of the costs and expenses actually incurred during the month for which such bill is rendered and payment made, in maintaining and repairing said leased portion of the tracks, premises and property of the Pacific Company, and in paying taxes and assessments, general or special, legally laid or levied thereon, or upon any part thereof; which proportion shall be to the aggregate of the several amounts so paid, as the number of miles, or fraction thereof, run by the cars operated during the same month by the Burlington Company over said tracks, or any part thereof, shall be to the whole number of car miles, or fraction thereof, run upon the same tracks, or any part thereof, during the same period,

735 by all the occupants of said premises. In computing the "car miles" under the terms of this agreement, the movement of engines or cars on said leased premises, for the purpose of doing ordinary switching at South Omaha or at points between South Omaha and Gilmore Junction, shall not be considered. An engine and tender shall be counted as two cars, and no distinction made between passenger and freight cars.

(c) The Burlington Company will also pay, monthly, during the entire period of this agreement, a like proportion of the cost of such watchmen, flagmen, and other employes, necessary in the operation of the road, and also of the cost of such signals, gates, lights and such other devices, as may be necessary for the proper protection of the tracks on the leased premises described in "Exhibit A," hereto annexed, or that may be required by State or municipal authority, whether as to streets and alleys or public highways, or as to crossing of railroads now or that may be hereafter constructed over said leased premises of the Pacific Company; but each Company

shall bear and pay the wages of its own train-men, and the running expenses of its own trains and equipment.

(d) In case the Pacific Company shall be required, by the State, or municipal authority, or should it on its own motion or volition, construct or erect a viaduct or approaches over, or tunnels under, said demised premises, the same shall be made at the cost of the Pacific Company, which cost shall be added to the gross valuation of the Pacific Company's property herein demised, and the Burlington Company shall, during the term of this contract, pay to the Pacific Company, upon such added valuation, in accordance with the provisions of subdivision (a) of Section 2, Article I, hereof.

736 (e) All expenditures for renewals, improvements, or betterments, which the Pacific Company may charge to construction account, shall be added to the valuation of the demised premises; and, from and after the date of receiving a bill for such expenditures, the Burlington Company will pay to the Pacific Company, monthly, during said term, a sum equal to one twelfth ($1/12$) of thirty-three and one third per cent ($33\frac{1}{3}\%$) of five per cent (5%) of the actual cost of such renewals, improvements or betterments.

Provision for Construction of additional tracks, and expenses thereof.

Sec. 3. Should the Pacific Company, at any time during the term hereby created, elect to provide additional tracks, side-tracks, spurs, stations, or other facilities, for the accommodation of local industries, or the transaction of business, at local points along the leased premises between the junction of the Burlington Company's tracks with the Pacific Company's tracks, said junction being designated by the letter "F" on the annexed map marked "Exhibit A", and the point "G" on said map, it shall have the right to do so, and the Burlington Company (on notice of the election by the Pacific Company of its intention to provide said additional facilities, or at any time within sixty days after the construction or provision of such additional tracks or facilities) may use and occupy the same, if it shall so elect and give written notice to the Pacific Company of its intention so to do; and for such use and occupation of said additional facilities, and the rights and privileges connected therewith, the Burlington Company will pay to the Pacific Company, monthly, during said term, upon bills rendered therefor by the Pacific Company, a sum equal to one-twelfth ($1/12$) of thirty-three and one-third per cent. ($33\frac{1}{3}\%$) of five per cent. (5%) of the actual cost of such additional facilities, and further pay, monthly, the same proportion, as ascertained under Section 2, subdivisions (b) and

737 (c) hereof, of the cost and expenses incurred by the Paci-

fic Company in the payment of taxes, maintenance, repairs and betterments of such facilities, so availed of by the Burlington Company; and the rights of the Burlington Company, upon said payment being made promptly, for the use of such additional tracks or facilities, shall be the same as in respect to the side-tracks and other facilities described in Section 1, subdivisions (a) and (b) of this Article; Provided, That the use of tracks now existing between the said point "G" and the southern boundary of South Omaha, for serving industries or packing-houses now established, is not embraced in the leased premises covered by this agreement, except as specified in subdivision (b) of Section 1 of this Article.

Date effective.

Sec. 4. The rental and charges hereinbefore provided for shall commence to accrue on the 15th day of September, A. D. 1900. Rights granted not assignable.

Sec. 5. The Burlington Company may use the trackage privileges hereby granted to it, solely in the prosecution and transaction of its own business, and it shall not assign the rights hereby granted to it, or any part thereof, or any interest therein, to any other company or person; nor will it sublet any of the privileges hereby granted to it, or any part or parcel thereof, to any other person or company; nor will it grant or allow, directly or indirectly, the advantage or use of the trackage privileges hereby conferred upon it, to any other company or person; and any attempted sale, assignment, or underletting or transfer, of said right, title, or interest of the Burlington Company herein, or any part thereof, shall, at the
738 option of the Pacific Company, render this agreement void, and the Pacific Company thereupon may exclude the Burlington Company, and all persons or corporations claiming through it, from the occupation, use, and enjoyment of the rights and facilities granted by this contract.

Article II.

Use of tracks by other railroad companies.

Section 1. The Pacific Company may admit any other responsible company operating a railroad, to the joint occupation and use of the tracks and premises embraced in this agreement, upon such terms and conditions as it may deem fit and proper; but the Pacific Company hereby agrees that no contract which it may make with any other Railroad Company, for the joint occupancy of the demised premises, shall increase the legal liability of the Burlington Company relating to or affecting loss and damage to persons or property; provided, that such addi-

tional burden placed upon said tracks and premises shall not deprive the Burlington Company of its reasonable and proper use thereof for the purposes for which such use is hereby granted.

Termination of agreement.

Sec. 2. Either party hereto may terminate this agreement and all of the rights of occupancy, herein granted, of the premises herein described, by giving to the other party notice in writing of its election so to do, at the end of three years from the date of such notice; and at the end of such three years notice, the Burlington Company may, at its option, or shall, at the option of the Pacific Company, surrender up the quiet and peaceable possession of all of the premises embraced herein, in the same manner and to the same effect as if the full term hereby created had expired by limitation; provided, however, 739 that if, at any time hereafter, by operation of law, or because of any injunction process, the Pacific Company, or any successors or assign, trustee or receiver thereof, shall have the option or right to terminate this agreement, then, and in any such case, the Burlington Company, its successors and assigns, shall also have the option to terminate it.

Article III.

Control of the premises, maintenance of tracks, etc.

Section 1. The Pacific Company shall have the charge, supervision and control of the entire premises aforesaid, and the maintenance thereof; shall pay all taxes and assessments which shall be legally laid or levied thereon; shall maintain the same in good condition and repair, and make all betterments, improvements, repairs, renewals, and replacements thereof, and shall, through its superintendents, train dispatchers, or other authorized officers, order and direct the movement of all locomotives, cars and trains, on any part thereof, under such rules, regulations and time-schedules as may be from time to time adopted by the duly authorized officers of the Pacific Company; but said Burlington Company's engines, cars, and trains shall, in respect to such movement, be treated as equal in right with the engines, cars, and trains of a similar class of the Pacific Company, and any other company occupying said premises, and shall have equal preference over engines, cars, and trains of an inferior class belonging to, or operated by, the Pacific Company, or any other company,

Joint Employees.

Sec. 2. It is hereby further mutually understood and agreed that all employees upon the line leased or demised un-

der and by virtue of this contract, who are to perform joint service for the parties hereto, shall act impartially and
740 fairly, as between the parties, in the discharge of all duties, pertaining to the business of either of them; and if any such employe shall fail to act impartially as between the parties hereto, he shall be removed from employment upon the line covered by this agreement, upon reasonable cause shown therefor by the proper officer of the Burlington Company; and in case the Pacific Company refuses to remove such employe, the question of his removal shall be submitted to arbitration as hereinafter provided.

Sec. 3. Train dispatchers, operators, switchmen, sectionmen, watchmen, flagmen, and signalmen, and such other persons as may be employed in the performance of the duties incident to the joint use and operation of the portion of railway covered by this agreement, while employed thereon, although paid by the Pacific Company, shall be considered as joint employes, and shall assist the employes of either company in case of derailment or other accident; and any casualty, loss or damage to either party, occasioned by the carelessness or default of joint employes engaged in the performance of joint duties, shall be borne by the party suffering the loss; the intention of this contract being to grant the Burlington Company the right to run its trains, cars and engines over said demised premises, but not to insure it against the usual hazard attending the moving of trains.

Accidents and casualties; liability for, etc.

Sec. 4. Each company shall be solely responsible for accidents and casualties occurring upon or to its engines, cars and trains, arising out of any defects or failures of the track, structures, appurtenances and appliances, or from misplacement of switches, mistakes in setting signals, errors of train dis-
741 patchers, telegraph operators, flagmen, switchmen, watchmen, or from any other cause whatever, except such as may be occasioned by the engines, cars, or trains of both companies colliding through the fault of the trainmen; and in all such cases of collision the company whose trainmen are at fault shall pay all damages accruing to the other company, to persons and to property; and in case such collision or accident is caused by the fault of the employes of both parties, or by one or more of the joint employes of said parties then each party shall bear, settle and pay all the loss and damage or injury caused thereby to its own property, or to the property under its control, or to its employes, or to its passengers. If, however, the Burlington Company shall notify the Pacific Company, in writing, that any joint employe is negligent or incompetent, then the Pacific Company shall be liable to the

Burlington Company for all damages thereafter resulting to its property and employes, and to the property under its charge, and to its passengers, caused by the negligence or incompetence of such joint employe after notice given.

Liability under acts or omissions of employes.

Sec. 5. It is mutually agreed and understood that the Pacific Company shall not be liable for any loss or damage occurring upon said demised premises, caused by the acts or omissions of the sole employes of the Burlington Company, or by the acts or omissions of the sole employes of any other company or companies that may be admitted to the use of said demised premises; nor shall the Pacific Company be liable for loss or damage to the trains of the Burlington Company, caused by collision with the trains of any other company or companies that may be admitted to the use of said demised premises; but
742 nothing herein contained shall be construed as exempting the Pacific Company from liability for any loss or damage that may be sustained by the Burlington Company or its employes, caused by the negligent acts or omissions of the sole employes of the Pacific Company.

Sec. 6. If the parties hereto cannot agree as to their liability in the case of collision or other casualty aforesaid, then the matter shall be submitted to [arbitrators,] chosen as herein-after provided; and the decision of such arbitrators shall be final and binding on the parties hereto.

Injuries to Persons or Property.

Sec. 7. In case of the killing of stock not in transit, or damages on account of injuries to persons or property not on the trains of either party, or damages caused by fire set out by its trains, the claim shall be adjusted by the proper officer of the party liable; and in paying therefor, the party in fault shall pay the full amount, and the final settlement therefor shall include and embrace a full and entire release for both parties hereto, and the other parties in the occupancy of said demised tracks. And the Burlington Company covenants, to and with the Pacific Company, that it will pay all damages for which a legal liability may exist against either party to this contract, for or on account of injuries to persons or property of the class defined in this section, which may be caused by the acts or omissions of the sole employes of the Burlington Company, and will save the Pacific Company harmless from the payment thereof. If any such damages are caused by the acts or omissions of joint employes as defined in this contract, or of such joint employes and the sole employes of either party hereto, such damages shall be borne and paid by the parties hereto, upon the car-mileage

basis as stated in clause (b), Section 2, of Article I,
743 hereof.

Sec. 8. In case of claims for personal injury, or killing or injuring of stock, or damage to other property, or fires, where it cannot be ascertained, after full investigation, which party caused the damage, if either of the parties hereto, or any other party which may be hereafter admitted to the use of said demised premises, shall deem it proper, after submitting the claim to all the parties concerned in the occupancy of said tracks, to pay, and shall pay, the damages claimed, such other parties shall pay to the party which paid said claim, their just proportion thereof on a car mileage basis; such proportion being ascertained under subdivision (b) of Section 2 of Article I. hereof, for the month in which claim arose.

Article IV.

Arbitration.

Section 1. Any matter of difference which may arise between the parties to this contract, as to its construction, or as to any violation of its provisions, or refusal to perform any duties that it may be alleged that it imposes, or as to any sum claimed to be due under its provisions from one party to the other, or any matters herein expressly declared to be proper subjects for reference, which cannot be amicably adjusted, may, on the demand of either, be submitted to three disinterested persons experienced in railway operation, as arbitrators. The party demanding such reference shall give to the other party notice of such demand, stating specifically the question to be submitted for decision, and naming a person who has the required qualifications to act as one referee. If, at the expiration of ten days

744 from the receipt of said notice, the party receiving it has not notified the party demanding the reference, of its nomination of its second referee having like qualifications, the party making the demand may make such selection. The first and second referees shall select the third. When the board is completed the referees shall fix a day and place for the hearing, of which the parties shall severally be notified. If the two referees chosen shall be unable to agree upon the third referee such third referee may be appointed, upon ten days notice upon motion of either party, by a Judge of the Circuit or District Court of the United States for the District of Nebraska. After hearing the testimony and arguments which may be submitted by either party, the referees, if they unanimously agree upon the award, shall state it in writing, which, when delivered to both parties, shall be binding and conclusive on each, and each party hereby agrees to be conclusively bound thereby. If they cannot unani-

mously agree, they shall, by like agreement, select two additional referees, having like qualifications; if the two additional referees cannot be unanimously agreed upon, they may be appointed by a Judge of the Circuit or District Court of the United States for the District of Nebraska; and to the board thus constituted shall be submitted a statement of the facts as to which there is a unanimous agreement between the first three referees selected as above, and all testimony pertaining to the matters in dispute as to which such referees cannot agree. The award of the majority of the five referees shall be in writing, and, when delivered to the parties, shall be as final and conclusive as the award of the first chosen referees would have been. If either party refuses to keep and perform such award, the adverse party may enforce the same by appropriate proceedings in any court of law or equity, and shall have the right, upon
745 its own election, expressed in writing, to declare this indenture terminated and of no further effect or obligation, which termination shall take effect one year from the date on which notice thereof is served on the delinquent party; Provided, however, That both of the parties hereto shall have the right to assail such award for fraud or misconduct on the part of either of the parties hereto or of said arbitrators.

Performance of Agreements Pending Arbitration.

Sec. 2. No difference which may arise as to the construction or performance of any of the covenants, promises, and agreements herein contained, shall effect, while it remains undetermined, the use of the railroad tracks in the manner in which the parties shall have theretofore enjoyed their use; but such use shall continue, and settlements and payments shall be made, as before the existence of such disagreement; and when it is finally determined, by reference or otherwise, payments and settlements shall be made by the respective parties as may be required by the award of the referees, or as provided in the agreement or adjustment, as the case may be.

Agreements Binding upon Successors.

Sec. 3. The covenants, promises and agreements contained in this agreement shall be binding upon the successors of the respective parties.

Date of Execution.

In testimony whereof, the parties hereto have each, by the authority of their respective Boards of Directors, hereunto subscribed their corporate names, by their respective presidents, and affixed hereto their respective corporate seals, attested by their respective secretaries, this 7th day of August, A. D. 1900.

[Seal] UNION PACIFIC RAILROAD COMPANY,
By Horace G. Burt, President.

Attest: Alex. Millar, Secretary.

[Seal] CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY,

746 By C. E. Perkins, President.

Attest: T. S. Howland, Secretary.

State of Nebraska,

County of Douglas—ss.

Be it remembered that on the 7th day of August, A. D. 1900, before me, the undersigned, a notary public within and for the county and state aforesaid, personally appeared Horace G. Burt, President of Union Pacific Railroad Company, to me personally known to be such president, and to be the same person who executed the foregoing instrument on behalf of said company, and duly acknowledged the same to be his free act and deed as such president, and the free act and deed of said company, for the uses and purposes therein expressed.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, at my office, in said county and state, the day and year last above written.

[Notarial Seal] H. T. LEAVITT,
Notary Public.

State of Massachusetts,

County of Suffolk—ss.

Be it remembered that on this 16th day of August, A. D. 1900, before me, the undersigned, a notary public within and for the county and state aforesaid, personally appeared C. E. Perkins, President of the Chicago, Burlington & Quincy Railroad Company, to me personally known to be such
747 president, and to be the same person who executed the foregoing instrument for and on behalf of said company, and duly acknowledged the same to be his free act and deed as such president, and the free act and deed of said company, for the uses and purposes therein expressed.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, at my office, in said county and state, the day and year last above written.

[Notarial Seal] WALTER J. JARVIS,
Notary Public.

Approved as to form:

W. R. Kelley, Gen. Solicitor.

Approved as to form:

Charles F. Manderson, General Solicitor.

President's Office Union Pacific R. R. Co.

May 23, 1901, Omaha, Neb.

Endorsed: Filed Jan. 24, 1907. Geo. H. Thummel,
Clerk.

749

President's Office Union Pacific R. R. Co.
Aug. 16, 1900, Omaha, Neb.

Copy.

Exhibit 12.

Agreement

Dated April 25th. 1900,

Union Pacific Railroad Company,

with

The Missouri Pacific Railway Company,

For Trackage Between

Gilmore Junction and Summit Junction.

Dates—Parties.

Articles of Agreement, made and entered into, in duplicate, this 25th day of April, A. D. 1900, by and between Union Pacific Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Utah, (hereinafter called the Pacific Company), party of the first part, and The Missouri Pacific Railway Company, a corporation created and existing under and by virtue of the laws of the States of Missouri and Kansas (hereinafter called the Missouri Company), party of the second part, Witnesseth:

Article I.

Term—Connection with and Use of Tracks.

Section 1. In consideration of the rents, charges and agreements herein set forth, to be by said Missouri Company well and truly paid, kept and performed, the said Pacific Company hereby lets and grants to said Missouri Company, for the term ending June 30, 1949, the right to connect the railroad tracks at Gilmore Junction now occupied by it, at the place hereinafter designated, with the tracks of the Pacific Company, and to run, manage, and operate the passenger trains and freight trains, engines and cars, of all classes, of said Missouri Company, in the transaction of its business as a common carrier, over, along, and upon that part and so much of the tracks of the Pacific Company, including the use of the necessary side and passing tracks for the passing of trains of the Pacific Company, between the points described as follows:

Description of Tracks—Mileage.

Commencing at the junction of the railroad track or tracks

of the Pacific Company with the track or tracks now occupied by the said Missouri Company, at Gilmore Junction, a point in the south-west quarter of the southeast quarter of section twenty-seven (27,) Township fourteen (14) north, Range thirteen (13) east of the Sixth principal meridian, indicated by the letter "F" on the map of the premises embraced in this agreement, hereto attached, marked "Exhibit A", and made a part hereof; running thence north-westerly along and upon said track or tracks of the Pacific Company, as indicated upon said map by the yellow lines to a connection at Summit Junction with the track or tracks belonging to or occupied by the Missouri Company, at a point in the south-east quarter of the south-west quarter of Section thirty-three (33), township fifteen (15) north, Range thirteen (13) east of the Sixth principal meridian, marked "G" on said attached map, a distance of 5.43 miles. [Provided] however, that as to the passenger trains or passenger engines, of the Missouri Company, operated over the track or tracks of the Pacific Company between Gilmore Junction and the Pacific Company's General Passenger Station grounds at Omaha, the route of operation of such trains or engines shall be from the point "F" upon said "Exhibit A," over and along the Pacific Company's track or tracks to the point indicated by the letter "E" upon said "Exhibit A", hereto annexed, at which point "E" a connection is made with the trackage privileges of the Missouri Company, held by it under its contract with the Pacific Company of date April 25th, A. D. 1900; and the trackage and other charges in respect to such passenger train or passenger-engine operation, under the terms of this contract, shall be computed for the track or tracks used therefor, between said points "F" and "E" on said "Exhibit A," and for a distance of 5.17 miles.

Rates to be paid for Trackage—Trackage Rates Subject to Revision Every 10 Years—Rates for Coal and Water—Monthly Settlements.

Section 2. For such occupation and use of tracks, and for the rights and privileges herein granted, the Missouri Company covenants, promises and agrees to pay to the Pacific Company, monthly, during the said term, upon bills rendered therefor by the Pacific Company, the sum of forty (40) cents per train mile for each and every train, or twenty (20) cents per engine mile for each and every engine without cars attached thereto, moved over, along, or upon the tracks therein demised.

The above mentioned rates for the said trackage privileges shall be subject to change or revision at the end of each

ten-year period of this contract, at the instance and request of either of the parties hereto, and any differences between the parties in respect thereto shall be subject to arbitration as hereinafter provided.

The Missouri Company further agrees to pay the actual cost, including freight charges and handling, plus ten per cent., for coal furnished and delivered on the tenders of the engines of the Missouri Company, and fifty (50) cents per engine tank for each and every tank of water furnished by the Pacific Company, while on the leased premises; all of which necessary supplies of coal and water the Pacific Company agrees to furnish to the Missouri Company, unless prevented by
752 scarcity; all statements of accounts to be rendered monthly, and to be paid on or before the 20th day of the month succeeding that in or for which the charges accrued.

Division of Expenses for Watchmen, Flagmen, Signalmen, etc.—Expense of Interlocking Plant at Gilmore.

Section 3. The Missouri Company will also pay, monthly, during the entire period of this agreement, a proportion of the cost of such watchmen, flagmen, switch-tenders, and signalmen, and also of the cost of such signals, gates, lights, and of such other devices as may be necessary for the proper protection and operation of the tracks described in "Exhibit A," hereto annexed, or that may be required by state or municipal authority, whether as to streets and alleys, public highways, or as to the crossing of railroads now, or that may be hereafter, constructed over said tracks of the Pacific Company; and the proportion of such cost in any month, to be borne by the Missouri Company, shall be to the aggregate amount of such cost in that month as the number of cars operated during the same month by the Missouri Company over said tracks, between Gilmore Junction and Summit Junction, shall be to the whole number of cars operated thereover during the same period. In computing the charges, as per this Section required, an engine and tender shall be computed as two cars. Provided, however, that the Missouri Company shall pay one-half the cost of installing, maintaining and operating the interlocking plant at Gilmore Junction, until such time as another Company may be permitted to connect with the tracks of the Pacific Company at or near said point and join in the use of said plant, when such cost of instalment, maintenance, and operation shall be reapportioned, and the Missouri Company's proportion shall be one-third the cost thereof.

753 Date Effective.

Section 4. The rental and charges hereinbefore pro-

vided for shall commence to accrue on the twenty-ninth day of April, A. D. 1900.

Trackage Privileges Defined.

Section 5. The Missouri Company may use the trackage privileges hereby granted to it solely in the prosecution and transaction of its own business, and it shall not assign the rights hereby granted to it, or any part thereof, or any interest therein, to any other company or person, nor will it sublet any of the privileges hereby granted to it, or any part or parcel thereof, to any other person or company, nor will it grant or allow, directly or indirectly, the advantage or use of the trackage privileges hereby conferred upon it to any other company or person; and any attempted sale, assignment, or underletting or transfer of said right, title or interest of the Missouri Company herein, or any part thereof, shall, at the option of the Pacific Company, render this agreement void, and the Pacific Company thereupon may exclude the Missouri Company and all persons or corporations claiming through said Company from the occupation, use and enjoyment of the rights and facilities granted by this contract; provided, however, that the provisions of this Section shall not be construed to prevent the Missouri Company from hauling in its own trains the cars of other companies with which it shall have arrangements for through service and divisions of revenue based thereon, and when said cars shall be taken into its trains at a point not less than twenty-five (25) miles distant from the City of Omaha.

Article II.

Use of tracks by Other Railroad Companies.

754 Section 1. The Pacific Company may admit any other company operating a railroad, to the joint possession and use of tracks and premises embraced in this agreement, upon such terms and conditions as it may deem fit and proper; provided, however, that such additional burden placed upon said tracks and premises shall not deprive the Missouri Company of its reasonable and proper use thereof for the purposes for which such use is hereby granted.

Number of Cars per Train and Power of Engines.

Section 2. Each train moved by the Missouri Company over the demised track or tracks, shall be limited to the number of cars which can be drawn over the same by one ordinary ten-wheel engine; provided, however, that when extraordinary conditions render two or more such engines necessary for the hauling of is trains, which ordinarily could be drawn by one such engine, such additional power may be used while such

conditions continue; and provided further, that if the Missouri Company shall elect to use, on its own line in its regular business, engines having greater power than the ten-wheel engines now in use, said Company shall have the right to use engines having equal power on the demised tracks, but when such engines are used the compensation to be paid shall be increased in proportion to the increase in power.

Other Tracks May be Substituted on 90 Days' Notice.

Section 3. Said Pacific Company may, at its own cost and for its own convenience, on giving ninety (90) days' written notice to the Missouri Company of its intention so to do, furnish other track or tracks in lieu of the track or tracks herein described, for the accommodation of the Missouri Company's trains as herein provided, and upon such substitute track or tracks the rights, privileges, duties and liabilities of the respective parties hereto, shall be precisely the same as in respect to the tracks heretofore specifically shown and
755 described, it being understood that such substituted track or tracks, as far as reasonably practicable to provide the same, shall be as conveniently located and situated for the operation and transaction of the business of the said Missouri Company as the track or tracks herein described, and that the charge made or to be made by the Pacific Company in respect to such substitute track or tracks shall be the same as the charge made for the use of the track or tracks and for the trackage privileges hereinbefore specifically described. On the expiration of such written notice, as herein provided, the Missouri Company agrees to cease the use of the track or tracks herein specifically described, and thereafter to use the track or tracks substituted in lieu thereof.

Article III.

Use of Passenger Station at South Omaha.

Section 1. The Pacific Company hereby agrees to allow the Missouri Company the use of its passenger station at South Omaha and to handle the passenger business of the Missouri Company thereat; for which use and accommodation the Missouri Company agrees to pay to the Pacific Company an agreed monthly rental of Eight dollars (\$8.00) and also the proportion of the monthly working expenses of said passenger station that the number of tickets sold for the Missouri Company each month bears to the whole number of tickets sold in the same month at said station.

Handling of Freight Business at South Omaha.

Section 2. The Pacific Company agrees to provide the facil-

ities for, and to handle, the freight business of the Missouri Company at the Pacific Company's freight depot at South Omaha; and the Missouri Company agrees to pay to the

756 Pacific Company, as compensation therefor, an agreed monthly rental of Eight dollars (\$8.00), and in addition thereto, fifty (50) cents per ton, with a minimum of Fifteen dollars (\$15.00) per month, for all freight handled through the freight-house, and two dollars (\$2.00) per car for carload freight switched to the Pacific Company's team tracks or to industries reached by the Pacific Company's tracks, the return empties to be handled free.

Rentals Subject to Revision.

Section 3. The rentals and charges in this Article specified, for the use of South Omaha Passenger and freight station facilities of the Pacific Company by the Missouri Company, shall be subject to revision from time to time on thirty (30) days' written notice from either party to the other; and in case of differences arising between the parties hereto, resulting in disagreements in respect to such rentals and charges, such differences shall be referred to arbitration, as hereinafter provided.

Article IV.

Local Business Excluded.

Section 1. Said Missouri Company agrees to do no passenger or freight business locally on the leased premises, and will give reasonable notice to prevent the entry of passengers into its trains for transportation locally on said leased premises; but if, despite such notice, such passengers do enter its trains and are transported locally between points on the leased premises, all fares for the transportation of such passengers shall be collected by said Missouri Company at the current tariff rates of the Pacific Company, and the full amount of fares so collected by the Missouri Company shall be accounted for and paid over monthly to the Pacific Company.

757 Section 2. Said Missouri Company also agrees to do no mail or express business locally on the leased premises, and to pay over to the Pacific Company all moneys that may be received by the Missouri Company for transportation of the United States mails or for any other service rendered to the Government, locally, on said premises.

Article V.

Maintenance of Tracks. Movements of Trains, Etc.

Section 1. The Pacific Company shall have the care and custody of all the premises aforesaid; shall pay all taxes and

assessments which shall be legally laid or levied thereon; shall maintain the same, and make all betterments, improvements, repairs, renewals and replacements thereof; and shall, through its Superintendent, train dispatchers, or other authorized officers, order and direct the movement of all locomotives, cars and trains, on any part thereof, under such rules, regulations and time schedules, as may be from time to time adopted by the duly authorized officers of the Pacific Company, and said trains shall, in respect to such movement, be treated as the Pacific Company's trains of similar class, and shall have equal preference over trains of inferior class belonging to any party occupying said premises.

Joint Employees.

Section 2. It is hereby further mutually understood and agreed that all employes upon the line leased or demised, under and by virtue of this contract, who are to perform service for the parties hereto, shall act impartially and fairly as between the parties in the discharge of all duties pertaining to the business of either of them; and if any such employe shall fail to act impartially as between the parties hereto, he shall be removed from employment upon the line covered by this agreement, upon reasonable cause shown therefor by the proper officer of the Missouri Company; and in case the Pacific Company refuses to remove such employe, the question of his removal shall be submitted to arbitration as hereinafter provided.

Section 3. Train dispatchers, operators, switchmen, sectionmen, watchmen, flagmen and signalmen, and such other persons as may be employed in the performance of the duties incident to the joint use and operation of the portion of railway covered by this agreement, while employed upon the demised premises, although paid by the Pacific Company, shall be considered as joint employes and shall assist the employes of either company, in case of derailment or other accident; and any casualty, loss or damage to either party, occasioned by the carelessness or default of joint employes, shall be borne by the party suffering the loss; the intention of this contract being to grant the Missouri Company the right to run its trains over the demised premises, but not to insure it against the usual hazard attending the moving of trains.

Accidents and Casualties; Liability for, etc.

Section 4. Each Company shall be solely responsible for accidents and casualties occurring upon or to its engines, cars, and trains arising out of any defects or failures of the track,

structures, appurtenances and appliances, or from misplacement of switches, mistakes in setting signals, errors of train dispatchers, telegraph operators, flagmen, switchmen, watchmen, or from any other cause whatever, except such as may be occasioned by the engine, cars or trains of both companies colliding through the fault of the trainmen, and in all such cases of collision the Company whose trainmen are at fault

shall pay all damages accruing to the other company, 759 to persons and to property; and in case such collision or accident is caused by the fault of the employees of both parties, or by one or more of the joint employees of said parties, then each party shall bear, settle and pay all the loss and damage or injury caused thereby to its own property, or to the property under its control, or to its employees, or to its passengers; if however, the Missouri Company shall notify the Pacific Company in writing that any joint employee is negligent or incompetent, then the Pacific Company shall be liable to the Missouri Company for all damages thereafter resulting to its property and employees, and to the property under its charge, and to its passengers, caused by the negligence or incompetence of such joint employee after notice given.

Liability Under Acts or Omissions of Employees.

It is mutually understood and agreed that the Pacific Company shall not be liable for any loss or damage occurring on said line of railway caused by the acts or omissions of the sole employees of the Missouri Company, or by the acts or omissions of the sole employees of any railway company other than the Missouri Company; nor shall the Pacific Company be liable for any loss or damage to the trains of the Missouri Company caused by a collision with trains of any other Company which the Pacific Company may let into the joint use of said tracks, unless such collision shall be caused by the negligence of the trainmen of the Pacific Company.

Injuries to Persons or Property.

The Missouri Company hereby covenants and agrees to and with the Pacific Company that it will pay all damages for which a legal liability may arise against either party to this contract for or on account of injuries to persons or property 760 which may accrue on or be occasioned by the engines, cars, or trains of said Missouri Company on the line of the Pacific Company, except in cases of collision through the negligence of trainmen of the Pacific Company.

Arbitration.

If the parties hereto cannot agree as to their liability in the

case of collision or other casualty aforesaid, then the matter shall be submitted to arbitrators, chosen as hereinafter provided, and the decision of such arbitrators shall be final and binding on the parties hereto.

Arbitration (Continued).

Section 5. Any matter of difference which may arise between the parties to this contract, as to its construction, or as to any violation of its provisions, or refusal to perform any duties that it may be alleged that it imposes, or as to any sum claimed to be due under its provisions from one party to the other, or any matters herein expressly declared to be proper subjects for reference, which cannot be amicably adjusted, may on the demand of either, be submitted to three disinterested persons experienced in railway operation, as arbitrators. The party demanding such reference shall give to the other party notice of such demand, stating specifically the question to be submitted for decision, and naming a person, who has the required qualifications, to act as one referee. If, at the expiration of ten days from the receipt of said notice, the party receiving it has not notified the party demanding the reference, of its nomination of its second referee having like qualifications, the party making the demand may make such selection. The first and second referees shall select the third. When the board is completed the referees shall fix a day
761 and place for the hearing, of which the parties shall severally be notified. If the two referees chosen shall be unable to agree upon the third referee, such third referee may be appointed, upon ten days' notice, on motion of either party by a Judge of the Circuit or District Court of the United States for the District of Nebraska. After hearing the testimony and arguments which may be submitted by either party, the referees, if they unanimously agree upon the award, shall state it in writing, which, when delivered to both parties, shall be binding and conclusive upon each, and each party hereby agrees to be conclusively bound thereby. If they cannot unanimously agree, they shall by like agreement, select two additional referees, having like qualifications; if the two additional referees cannot be unanimously agreed upon, they may be appointed by a Judge of the Circuit or District Court of the United States for the District of Nebraska, and to the board thus constituted shall be submitted a statement of the facts as to which there is a unanimous agreement between the first three referees selected as above and all the testimony pertaining to the matters in dispute, as to which said referees cannot agree. The award of the majority of the five referees shall be in writing, and, when delivered to the parties, shall

be as final and conclusive as the award of the first chosen referees would have been. If either party refuses to keep and perform such award, the adverse party may enforce the same by appropriate proceedings in any court of law or equity, and shall have the right, upon its own election, expressed in writing, to declare this indenture terminated and of no further effect or obligation, which termination shall take effect one year from the date on which notice thereof is served on the delinquent party.

Performance of Agreements Pending Arbitration.

762 Section 6. No difference which may arise as to the construction or performance of any of the covenants, promises, and agreements herein contained, shall affect, while it remains undetermined, the use of the railroad tracks in the manner in which the parties shall have theretofore enjoyed their use; but such use shall continue, and settlements and payments shall be made as before the existence of such disagreement; and when it is finally determined by reference or otherwise, payments and settlements shall be made by the respective parties as may be required by the award of the referees, or as provided in the agreement or adjustment, as the case may be.

Agreements Binding Upon Successors.

Section 7. The covenants, promises, and agreements contained in this agreement shall be binding upon the successors of the respective parties.

Date of Execution.

In Testimony whereof, the parties hereto have each, by the authority of their respective Boards of Directors, hereto subscribed their corporate names, by their respective President and Vice President, and affixed hereto their respective corporate seals, attested by their respective Secretaries this 25th day of April, in the year of our Lord One Thousand Nine Hundred.

[Seal] UNION PACIFIC RAILROAD COMPANY,
By Horace G. Burt, President.

Attest: Alex Millar, Secretary.

THE MISSOURI PACIFIC RAILWAY COMPANY,
[Seal] By C. G. Warner, Vice President.
Attest: F. W. Irland, 2nd Asst. Secretary.

Endorsed: Filed Jan. 24, 1907. Geo. H. Thummel, Clerk.

Exhibit 13.

Receiver, Union Pacific System.

Switching tariff for Omaha Yards.

In effect February 23rd, 1897.

([Supercedes] switching tariff of March 3rd, 1892.)

First District.

Comprising all tracks between Jones and Nicholas Streets.

Between all points in this District, \$2.00 per car.

Second District.

Comprising all tracks between 6th and Jones and 21st streets.

Between all points in this District, \$2.50 per car.

Between all points in First District and all points in Second District, \$3.00 per car.

Third District.

Comprising all tracks between 21st street and Summit.

Between all points in this District, \$2.50 per car.

Between all points in Second District and all points in Third District, \$3.00 per car.

Between all points in First District and all points in Third District, \$3.00 per car.

Fourth District.

Comprising all tracks between Nicholas Street and Cut-off Lake.

Between all points in this District, \$2.00 per car.

Between all points in Fourth District and all points in First District, \$3.00 per car.

Between all points in Fourth District and all points in Second District, \$3.50 per car.

Between all points in Fourth District and all points in Third District, \$4.00 per car.

The above rates are subject to change at any time without further notice than the publication of a new tariff.

Approved

E. Dickinson,
General Manager.

P. J. Nichols,
Gen'l Superintendent.

Endorsed: Filed Jan 24 1907. Geo. H. Thummel, Clerk.

UNION PACIFIC RAILROAD COMPANY.

PER DIEM RECLAIM STATEMENT.

Inter

Statement of Cars Switched by Union Pacific Railroad Company for Mo Pac R yat Omaha Station, Month of September 1905

Arbitrary Time Allowance _____ Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard
1	18	C.R.I. & P.	61391	R.I.		49	21	C.M. & St. P.	61004	Mil.	
2		C.M. & St. P.	43074	Mil.		50		Can. Pac.	35676	C.G.W.	
3		C.G.W.	30343	C.G.W.		51		C.R.I. & P.	9168	R.I.	
4		C.R.I. & P.	1952	—		52		C.M. & St. P.	75260	Mil.	
5		C.G.W.	8108	—		53		—	40198	—	
6		—	16386	—		54		C. & N.W.	72136	C. & N.W.	
7		—	15934	—		55		C.G.W.	15424	C.G.W.	
8		M.C.	22493	R.I.		56		C.M. & St. P.	29372	Mil.	
9		C. & N.W.	54306	C. & N.W.		57		—	—	—	
10		C.G.W.	13544	C.G.W.		58		—	—	—	
11		C. & N.W.	84596	C. & N.W.		59	22	B.C.R. & N.	4036	R.I.	
12		—	—	—		60		C.R.I. & P.	9453	—	
13		—	—	—		61		P.C.O.	254	—	
14	19	C.G.W.	16228	C.G.W.		62		C.M. & St. P.	31994	Mil.	
15		—	184	—		63		C.G.W.	2210	C.G.W.	
16		—	1226	—		64		—	15224	—	
17		C. St. P. K.C.	8356	—		65		St. L. & S.F.	13769	R.I.	
18		B. & O.	72233	—		66		C.G.W.	29410	C.G.W.	
19		C. & N.W.	63584	C. & N.W.		67		—	15924	—	
20		—	76668	—		68		C.I. & L.	17589	C.G.W.	
21		C.R.I. & T.	150294	R.I.		69		L.V.	71138	—	
22		—	—	—		70		C.G.W.	16882	—	
23		—	—	—		71		—	16954	—	
24	20	C.R.I. & P.	6548	R.I.		72		C. & N.W.	68598	C. & N.W.	
25		D.L. & W.	22549	—		73		N.Y.C. St. L.	12108	R.I.	
26		N.Y.C. St. L.	59144	—		74		C.G.W.	17810	C.G.W.	
27		Ia. Cent.	02386	—		75		C. & N.W.	68924	C. & N.W.	
28		C.R.I. & M.	350577	—		76		C.M. & St. P.	35168	Mil.	
29		C.R.I. & P.	50110	—		77		—	20192	—	
30		B.C.R. & N.	13556	—		78		I.M. & S.	15891	C. & N.W.	
31		Mo. P.	22346	Mil.		79		St. L. K. Col.	5072	R.I.	
32		C.G.W.	14110	C.G.W.		80		G.N.	85714	—	
33		—	13130	—		81		St. L. & S.F.	4791	—	
34		—	14064	—		82		C.R.I. & P.	50315	—	
35		—	13258	—		83		—	2596	—	
36		—	16370	—		84		—	—	—	
37		—	16836	—		85		—	—	—	
38		L.E. & W.	7149	R.I.		86	23	C.G.W.	30329	C.G.W.	
39		C.R.I. & P.	57746	—		87		—	13694	—	
40		—	4127	—		88		—	17422	—	
41		C.G.W.	17238	C.G.W.		89		C.R.I. & P.	6350	R.I.	
42		C.R.I. & P.	2922	R.I.		90		—	53324	—	
43		—	3760	—		91		V.L. & P.	25335	—	
44		—	4981	—		92		C.R.I. & P.	56959	—	
45		—	5220	—		93		—	56709	—	
46		—	—	—		94		—	51004	—	
47		—	—	—		95		I.M. & S.	14685	Mil.	
48		—	—	—		96		—	—	—	

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE

NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory.

In order to follow out this rule, all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for Mo. Pac. Ry

815

at Omaha Station, Month of September 1905

Arbitrary Time Allowance _____ Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
1	24	C.M. & St.P.	63548	Mil.		49		C.R.I. & P.	57690	R.I.	
2		—	59684	—		50		Southern	17970	—	
3		Southern	31822	—		51		C. & E.I.	166	—	
4						52		B.C.R. & N.	6563	—	
5						53		C.R.I. & P.	56068	—	
6	25	P.F.W. & C.	5080	R.I.		54		—	4521	—	
7		C.R.I. & P.	5942	—		55		—	6881	—	
8		C.G.W.	30325	C.G.W.		56		—	53797	—	
9		C.M. & St.P.	23708	Mil.		57		—	7731	—	
10		Mo.P.	15170	—		58					
11						59					
12						60	30	B.C.R. & N.	7725	R.I.	
13	26	C.R.I. & P.	57438	R.I.		61		C.R.I. & P.	54879	—	
14		—	5155	—		62		St L. & S.F.	34842	—	
15		B.C.R. & N.	5502	—		63		C.R.I. & P.	5241	—	
16		Van Line	812	—		64		N.Y.C.H.R.	64796	—	
17		C.R.I. & P.	57852	—		65		C.R.I.E.P.	250039	—	
18						66		P.R.R.	98113	—	
19						67		C.R.I. & P.	51136	—	
20	27	Mo.P.	7631	Mil.		68		C.O. & G.	1357	—	
21		St.L. & G.	31608	R.I.		69		M.C.	45387	—	
22		C.R.I. & P.	55022	—		70		Penn.Co.	54	—	
23		—	56007	—		71		No.Pac.	42279	—	
24		—	51535	—		72		Erie	102582	—	
25		C.O. & G.	10644	—		73		B. & O.	89494	—	
26						74		C.O. & G.	10146	—	
27						75		L.S. & M.S.	44698	—	
28	28	C.R.I. & P.	55435	R.I.		76		P.R.R.	60851	—	
29						77		C. & E.I.	35450	—	
30						78		L.S. & M.S.	47757	—	
31	29	Mo.P.	16407	Mil.		79		N.Y.C.H.R.	24048	—	
32		C. & N.W.	61010	C. & N.W.		80		B.C.R. & N.	10182	—	
33		M. & O.	15114	M. & O.		81		P.R.R.	69772	—	
34		C.R.I. & T.	150197	R.I.		82					
35		C.R.I. & P.	57795	—		83					
36		—	51115	—		84					
37		—	54706	—		85					
38		—	4868	—		86					
39		C.R.I. & T.	150270	—		87					
40		C.R.I. & P.	50665	—		88					
41		C.St.P.K.C.	9556	C.G.W.		89					
42		C.G.W.	17934	—		90					
43		Wab.	66866	—		91					
44		C.R.I. & P.	54126	R.I.		92					
45		B.C.R. & N.	10233	—		93					
46		C.M. & St.P.	29218	Mil.		94					
47		C.R.I. & T.	150409	R.I.		95					
48						96					
TOTAL											

Correct: **Endorsed: Filed Jan 24 1907** Correct:

Geo. H. Thummel, Clerk.

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE

NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

In order to follow out this rule all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

Exhibit 44 UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for Mo. Pac. Ry.

\$16 at Omaha Station, Month of August 1906 (5)

Arbitrary Time Allowance

Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
1	1	Ill.Cent.	40226	Mil. East		49					
2		Mo.P.	4502	—		50					
3						51	8	C.M. & St. P.	49548	Mil.	
4						52		Wab.	18384	—	
5	2	Mo.P.	5887	Mil.		53		—	18060	—	
6		N.Y.C. St. L.	9825	—		54					
7		C.M. & St. P.	14390	—		55					
8		I.M. & S.	7220	R.I.		56	9	Erie	72391	Mil.	
9		C.M. & St. P.	19843	Mil.		57		—	64029	—	
10						58		C.M. & St. P.	53956	—	
11						59		I.M. & S.	9282	C.G.W.	
12	3	Mo.P.	5887	Mil.		60		C.M. & St. P.	28006	Mil.	
13						61					
14						62					
15	4	C.R.I. & M.	350126	R.I.		63	10	C.O. & G.	11450	R.I.	
16		C.M. & St. P.	61436	Mil.		64		C.M. & St. P.	66360	Mil.	
17		—	19308	—		65		—	23950	—	
18						66		—	28006	—	
19						67					
20	5	No. Pac.	38669	C.G.W.		68					
21		K.C.N.W.	3049	R.I.		69	11	Mo.P.	15566	Mil.	
22		C.M. & St. P.	67902	Mil.		70		I.M. & S.	12029	—	
23		—	67476	—		71		C.M. & St. P.	41724	—	
24		Mo.P.	6368	—		72		C.G.W.	1106	C.G.W.	
25		—	6405	—		73		—	1768	—	
26		C.B. & Q.	65119	—		74		G.N.	12204	—	
27		Ill.Cent.	42672	—		75		C.G.W.	1134	—	
28		I.M. & S.	5556	—		76		—	9266	—	
29		—	16439	—		77		—	14904	—	
30		Mo.P.	4478	—		78		—	636	—	
31		A.T. & S.F.	53036	Mil.		79		—	9424	—	
32		I.M. & S.	20037	—		80		C.St. P.K.C.	10062	—	
33		Erie	86131	—		81		—	8126	—	
34		N.Y.L.E. & W.	51648	—		82		K.C.F.S. & M.	11534	R.I.	
35		C.St. P.K.C.	10406	C.G.W.		83		C.G.W.	7250	C.G.W.	
36		C.S.R.	8121	—		84		C.St. P.K.C.	2826	—	
37						85		Mo.P.	6472	Mil.	
38						86		C.G.W.	14776	C.G.W.	
39	6	K.C.F.I. & N.	1896	R.I.		87		C.M. & St. P.	56582	Mil.	
40		Erie	62057	Mil.		88		C.G.W.	17204	C.G.W.	
41		C.G.W.	14846	C.G.W.		89		—	17704	—	
42		C.R.I. & P.	4834	R.I.		90		—	17388	—	
43		L.E. & W.	10406	—		91		C.B. & Q.	19768	—	
44		C.M. & St. P.	24354	Mil.		92		C.G.W.	12624	—	
45						93		—	14778	—	
46						94		C.St. P.K.C.	11360	—	
47	7	I.M. & S.	12967	C.G.W.		95		C.M. & St. P.	55098	Mil.	
48		K.C.N.W.	3049	R.I.		96					
TOTAL											

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE

NO. 5 READS:

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UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for Mo. Pac. Ry817 at Omaha Station, Month of August 190 5

Arbitrary Time Allowance

Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
1	12	C.G.W.	14330	C.G.W.		49		C.M. & St. P.	50780	Mil.	
2		—	14462	—		50		—	70250	—	
3		C.M. & St. P.	51562	Mil.		51		—	—	—	
4		C.R.I. & T.	150265	R.I.		52		—	—	—	
5		C.O. & G.	1882	—		53	18	C.G.W.	17128	C.G.W.	
6		C.M. & St. P.	40902	Mil.		54		C.B. & Q.	28754	C.B. & Q.	
7		St. L. & S.W.	4486	R.I.		55		—	92823	—	
8		C.G.W.	7146	C.G.W.		56		C.G.W.	17020	C.G.W.	
9		C. & N.W.	46159	Mil.		57		C.O. & G.	1611	R.I.	
10		—	—	—		58		Ill. Cent.	41223	Mil.	
11		—	—	—		59		C. & N.W.	80696	C. & N.W.	
12	13	C.M. & St. P.	23264	Mil.		60		C.M. & St. P.	53308	Mil.	
13		—	—	—		61		C.G.W.	1774	C.G.W.	
14		—	—	—		62		—	1526	—	
15	14	Mo. P.	13462	Mil.		63		—	7174	—	
16		—	265	—		64		C.St. P. K.C.	9946	—	
17		Wab.	18122	—		65		—	8776	—	
18		C.M. & St. P.	59498	—		66		—	9510	—	
19		—	50044	—		67		C.G.W.	872	—	
20		I.M. & S.	14805	—		68		—	—	—	
21		C.M. & St. P.	24118	—		69		—	—	—	
22		Wab.	67185	O.B.T.		70	19	Mo. P.	27248	Mil.	
23		—	—	—		71		C.G.W.	1618	C.G.W.	
24	15	Wab.	67185	O.B.T.		72		C.St. P. K.C.	11842	—	
25		Mo. P.	17067	C.G.W.		73		I.M. & S.	14805	Mil.	
26		C.R.I. & P.	56108	R.I.		74		C.G.W.	150	C.G.W.	
27		C.B. & Q.	10261	B. & M.R.		75		C.St. P. K.C.	9460	—	
28		—	—	—		76		C.M. & St. P.	70116	Mil.	
29		—	—	—		77		B. & O.	166170	—	
30	16	Erie	68737	Mil.		78		—	—	—	
31		C.G.W.	16082	C.G.W.		79		—	—	—	
32		—	13196	—		80	20	C.M. & St. P.	71042	Mil.	
33		—	13766	—		81		C.G.W.	11620	C.G.W.	
34		C.M. & St. P.	49480	Mil.		82		—	2600	—	
35		—	46700	—		83		—	2558	—	
36		S.I.	1140	R.I.		84		C.St. P. K.C.	11758	—	
37		—	1689	—		85		—	11264	—	
38		—	1591	—		86		—	9824	—	
39		—	—	—		87		C.G.W.	60010	—	
40		—	—	—		88		—	—	—	
41	17	C.R.I. & P.	61139	R.I.		89		—	—	—	
42		C.G.W.	16352	C.G.W.		90	21	C.G.W.	16786	C.G.W.	
43		—	14650	—		91		C.R.I. & P.	56028	R.I.	
44		—	12742	—		92		D. & R.G.	—	—	
45		—	15756	—		93		C.R.I. & P.	250100	R.I.	
46		M. & O.	20578	M. & O.		94		C.R.I. & P.	67186	—	
47		C.G.W.	15774	C.G.W.		95		—	—	—	
48		—	—	—		96		—	—	—	
TOTAL											

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE

NO. 6 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

In order to follow out this rule, all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for Mo. Pac. RyS18 at Omaha Station, Month of August 1905

Arbitrary Time Allowance _____ Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
1	22	Mo. P.	28137	R. I.		49		C. O. & G.	11230	R. I.	
2		C. M. & St. P.	58476	Mil.		50		C. M. & St. P.	34762	Mil.	
3		—	73358	—		51		C. G. W.	1202	C. G. W.	
4		C. G. W.	16630	C. G. W.		52		—	8096	—	
5		—	15210	—		53		C. R. I. & P.	57798	R. I.	
6		—	13946	—		54		B. C. R. & N.	7303	—	
7		C. R. I. & P.	350787	R. I.		55		C. St. P. K. C.	11126	C. G. W.	
8		C. O. & G.	1015	—		56		G. B. & W.	1928	—	
9		—	—	—		57		C. B. & Q.	34010	B. & M. R.	
10		—	—	—		58		C. R. I. & P.	61216	R. I.	
11	23	C. & N. W.	38488	C. & N. W.		59		Mo. P.	28137	—	
12		C. St. P. K. C.	12076	C. G. W.		60		C. M. & St. P.	53020	Mil.	
13		C. G. W.	14446	—		61		—	74894	—	
14		C. St. P. K. C.	13346	—		62		—	17069	—	
15		C. G. W.	12920	—		63		—	—	—	
16		—	13240	—		64		—	—	—	
17		—	16474	—		65	26	C. R. I. & P.	50657	R. I.	
18		B. & O.	92906	—		66		C. G. W.	12888	C. G. W.	
19		C. M. & St. P.	61676	Mil.		67		—	1620	—	
20		C. R. I. & P.	54859	R. I.		68		—	11410	—	
21		—	5443	—		69		—	7332	—	
22		C. G. W.	13420	C. G. W.		70		—	12510	—	
23		—	14466	—		71		C. St. P. K. C.	10750	—	
24		C. St. P. K. C.	10258	—		72		P. B. & W.	1004	—	
25		—	11448	—		73		C. R. I. & P.	52501	R. I.	
26		K. C. F. I. & M.	1092	R. I.		74		C. M. & St. P.	18738	Mil.	
27		St. L. S. W.	5866	—		75		—	60096	—	
28		C. R. I. & P.	57267	—		76		—	35944	—	
29		I. M. & S.	14805	Mil.		77		P. R. R.	68196	—	
30		—	—	—		78		C. G. W.	8586	C. G. W.	
31		—	—	—		79		St. L. S. W.	3936	R. I.	
32	24	C. R. I. & P.	61891	R. I.		80		C. O. R.	6832	Mil.	
33		G. T.	13636	Mil.		81		C. N. W.	78324	C. G. W.	
34		C. M. & St. P.	55788	—		82		C. G. W.	11708	—	
35		C. R. I. & P.	250203	R. I.		83		—	—	—	
36		—	—	—		84		—	—	—	
37		—	—	—		85	27	C. M. & St. P.	35788	Mil.	
38	25	L. S. & M. S.	27231	C. G. W.		86		C. B. & Q.	20013	B. & M. R.	
39		C. G. W.	15272	—		87		C. G. W.	3254	C. G. W.	
40		P. R. R.	70197	—		88		—	778	—	
41		C. G. W.	11864	—		89		C. St. P. K. C.	10328	—	
42		C. H. & D.	45511	—		90		—	2786	—	
43		C. G. W.	7214	—		91		C. G. W.	150	—	
44		N. Y. C. H. R.	95112	—		92		—	7400	—	
45		—	59167	—		93		—	—	—	
46		C. M. & St. P.	30198	Mil.		94		—	—	—	
47		G. T.	62032	R. I.		95	28	C. R. I. & P.	250012	R. I.	
48		Mo. P.	20509	Mil.		96		C. G. W.	7288	C. G. W.	
TOTAL											

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory.

In order to follow out this rule, all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for Mo. Pac. Ryat Omaha Station, Month of August 1905

Arbitrary Time Allowance

Days.

Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
28	C. St. P. K. C.	1458	C. G. W.		49		C. M. & St. P.	49824	Mil.	
		9568	—		50		C. G. W.	12520	C. G. W.	
	C. G. W.	11910	—		51		P. C. C. & St. L.	11745	Mil.	
		10046	—		52					
	C. St. P. K. C.	8026	—		53					
	C. M. & St. P.	53426	Mil.		54					
					55					
					56					
29	C. & N. W.	81998	C. & N. W.		57					
	C. G. W.	3342	C. G. W.		58					
		11756	—		59					
		536	—		60					
		7370	—		61					
		1184	—		62					
		1696	—		63					
	C. St. P. K. C.	11842	—		64					
	Mo. P.	25476	—		65					
	C. G. W.	2386	—		66					
	Erie	84751	—		67					
	C. G. W.	3406	—		68					
		16710	—		69					
	C. M. & St. P.	22826	Mil.		70					
					71					
					72					
30	C. G. W.	10830	C. G. W.		73					
	C. St. P. K. C.	9234	—		74					
	C. M. & St. P.	63522	Mil.		75					
	C. & N. W.	94808	C. & N. W.		76					
	Mo. P.	26871	Mil.		77					
	C. St. P. K. C.	9024	C. G. W.		78					
	C. R. I. & P.	61110	R. I.		79					
	C. G. W.	8958	C. G. W.		80					
		2008	—		81					
	C. St. P. K. C.	2978	—		82					
		9704	—		83					
	C. & N. W.	39130	C. & N. W.		84					
					85					
					86					
31	Mo. P.	28497	Mil.		87					
	C. & N. W.	39130	C. & N. W.		88					
	C. St. P. K. C.	9704	C. G. W.		89					
		2978	—		90					
	C. G. W.	2008	—		91					
		8958	—		92					
	C. R. I. & P.	61110	R. I.		93					
	C. St. P. K. C.	9740	C. G. W.		94					
	Mo. P.	22951	Mil.		95					
					96					
TOTAL										

Correct: Endorsed: Filed Jan 24 1907 Correct:

Geo. H. Thummel, Clerk.

Agent RAgent R

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

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UNION PACIFIC RAILROAD COMPANY.

PER DIEM RECLAIM STATEMENT. By Union Pacific Railroad Company

Inter

Statement of Cars Switched for

C & N W in Nebr

R Y

at

Omaha

Station, Month of

August

190 5

Arbitrary Time Allowance

Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard
1	4	C.R.I. & T.	150666	R.I.		49					
2						50					
3	5	C.R.I. & P.	57746	R.I.		51					
4		—	57818	—		52					
5		—	7144	—		53					
6		P.M.	32614	Mil.		54					
7						55					
8						56					
9	10	C.M. & St. P.	27383	Mil.		57					
10						58					
11						59					
12	11	P.C.C. St. L.	18874	Mil.		60					
13		C.M. & St. P.	34496	—		61					
14						62					
15						63					
16	16	C.M. & St. P.	7995	Mil.		64					
17						65					
18						66					
19	19	C.M. & St. P.	40920	Mil.		67					
20						68					
21						69					
22	23	Co. & G.	4152	R.I.		70					
23						71					
24						72					
25	27	C.I. & L.	13429	Mil.		73					
26		C.R.I. & P.	85212	R.I.		74					
27						75					
28						76					
29	28	C.B. & O.	25861	Mil.		77					
30		C.M. & St. P.	24055	—		78					
31						79					
32						80					
33						81					
34						82					
35						83					
36						84					
37						85					
38						86					
39						87					
40						88					
41						89					
42						90					
43						91					
44						92					
45						93					
46						94					
47						95					
48						96					
TOTAL											

Correct:

Correct:

Agent

R

Agent

R

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 6 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

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UNION PACIFIC RAILROAD COMPANY.

PER DIEM RECLAIM STATEMENT.

Inter By Union Pacific Railroad Company
C & N W in Nebr

Statement of Cars Switched for _____ R y

at Omaha Station, Month of September 1905

Arbitrary Time Allowance _____ Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard
1						49					
2	2	C. & N. W.	6104	C. G. W.		50					
3						51					
4						52					
5	3	C. & N. W.	11019	R. I.		53					
6						54					
7						55					
8	4	C. & N. W.	41926	C. & N. W.		56					
9						57					
10						58					
11	9	C. & N. W.	6030	C. G. W.		59					
12		C. M. & St. P.	41176	Mil.		60					
13						61					
14						62					
15	23	M. V.	3212	C. G. W.		63					
16		St. L. S. W.	17510	R. I.		64					
17						65					
18						66					
19						67					
20						68					
21						69					
22						70					
23						71					
24						72					
25						73					
26						74					
27						75					
28						76					
29						77					
30						78					
31						79					
32						80					
33						81					
34						82					
35						83					
36						84					
37						85					
38						86					
39						87					
40						88					
41						89					
42						90					
43						91					
44						92					
45						93					
46						94					
47						95					
48						96					
TOTAL											

Correct: Endorsed: Filed Jan 24 1907 Correct:

Geo. H. Thummel, Clerk.

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory.

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UNION PACIFIC RAILROAD COMPANY.

Inter **PER DIEM RECLAIM STATEMENT.**
By Union Pacific Railroad Company

Statement of Cars Switched ¹for C & N W in Nebr R y

at Omaha Station, Month of October 190 5

Arbitrary Time Allowance _____ Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard
1						49					
2	7	Ill.Cent.	89305	O.B.T.		50					
3		C.&N.W.	61178	C.G.W.		51					
4						52					
5						53					
6	11	C.&N.W.	57690	C.G.W.		54					
7						55					
8						56					
9	12	C.I.&L.	5825	Mil.		57					
10						58					
11						59					
12	15	C.&N.W.	60570	C.G.W.		60					
13						61					
14						62					
15	20	C.I.&L.	11883	Mil.		63					
16						64					
17						65					
18	21	C.&N.W.	84520	C.G.W.		66					
19						67					
20						68					
21	22	Ill.Cent.	85366	O.B.T.		69					
22		W.C.	1986	C.&N.W.		70					
23		C.&E.I.	35451	R.I.		71					
24						72					
25						73					
26	26	Ill.Cent.	32213	C.&N.W.		74					
27						75					
28						76					
29	29	C.&N.W.	29562	C.G.W.		77					
30						78					
31						79					
32	30	C.R.I.&P.	76285	R.I.		80					
33						81					
34						82					
35	31	C.&N.W.	12606	R.I.		83					
36						84					
37						85					
38						86					
39						87					
40						88					
41						89					
42						90					
43						91					
44						92					
45						93					
46						94					
47						95					
48						96					
TOTAL											

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE

NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

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UNION PACIFIC RAILROAD COMPANY.

Inter **PER DIEM RECLAIM STATEMENT.**
By Union Pacific Railroad Company

Statement of Cars Switched ⁴for **C & N W in Nebr** R **Y**

at **Omaha** Station, Month of **November** 190 **5**

Arbitrary Time Allowance _____ Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard
1	1	C.R.I. & P.	5820	R.I.		49					
2		C.G.W.	17176	C.G.W.		50					
3		C.I. & L.	11595	Mil.		51					
4						52					
5						53					
6	2	C.G.W.	17176	C.G.W.		54					
7						55					
8						56					
9	4	C.R.I. & P.	4687	R.I.		57					
10						58					
11						59					
12	5	C.R.I. & P.	61501	R.I.		60					
13						61					
14						62					
15	9	C. & N.W.	79556	R.I.		63					
16						64					
17						65					
18	10	C. & N.W.	14900	C.G.W.		66					
19			19888			67					
20		C. & E.I.	10209	R.I.		68					
21						69					
22						70					
23	11	C. & N.W.	21506	C.G.W.		71					
24			16184			72					
25			14260			73					
26			59196			74					
27						75					
28						76					
29	20	C.R.I. & T.	150181	R.I.		77					
30						78					
31						79					
32	23	C.M. & St. P.	19160	Mil.		80					
33		la. Cent.	02206	C.G.W.		81					
34						82					
35						83					
36	24	Gt.	41001	R.I.		84					
37						85					
38						86					
39	25	C.R.I. & M.	350661	R.I.		87					
40						88					
41						89					
42	27	C.R.I. & P.	1903	R.I.		90					
43						91					
44						92					
45	30	C. & N.W.	66370	C.G.W.		93					
46						94					
47						95					
48						96					
TOTAL											

Correct: **Endorsed: Filed Jan 24 1907** Correct:

Geo. H. Thummel, Clerk.

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 6 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

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At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

PER DIEM RECLAIM STATEMENT.
By Union Pacific Railroad Company
C & N W in Nebr

Inter
Statement of Cars Switched ¹for _____ R Y
at _____ Station, Month of _____ 190_ 5
Arbitrary Time Allowance _____ Days.

Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard
2	C.M. & St. P.	27136	Mil.		49					
					50					
					51					
7	C.M. & St. P.	23283	Mil.		52					
	St. L. S. F.	30429	R. I.		53					
					54					
					55					
17	St. L. S. F.				56					
	C. & N. W.	47280	C. G. W.		57					
					58					
					59					
18	C. R. I. & P.	85854	R. I.		60					
	C. & N. W.	85718	—		61					
					62					
					63					
20	C. & N. W.	46214	R. I.		64					
					65					
					66					
26	D. & H. Co.	15280	R. I.		67					
					68					
					69					
29	C.M. & St. P.	7967	Mil.		70					
	C. G. W.	12140	C. G. W.		71					
					72					
					73					
30	C. G. W.	5009	C. G. W.		74					
					75					
					76					
					77					
					78					
					79					
					80					
					81					
					82					
					83					
					84					
					85					
					86					
					87					
					88					
					89					
					90					
					91					
					92					
					93					
					94					
					95					
					96					
TOTAL										

Correct: Endorsed: Filed Jan 24 1907 Correct:

Geo. H. Thummel, Clerk.

Agent _____ R _____

Agent _____ R _____

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

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UNION PACIFIC RAILROAD COMPANY.

PER DIEM RECLAIM STATEMENT. By Union Pacific Railroad Company C M & St P

Inter

Statement of Cars Switched ⁴for

R Y

at OmahaStation, Month of August190 5

Arbitrary Time Allowance

Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard
1	1	M.O.P. Erie	16507 86131	M.P.H.&M.E. M.O.P.		49		C.M. & St.P.	70730	B. & M.R.	
2						50		60466		+	
3						51		P.T.W.C.	5819	B. & M.R.	
4						52		P.R.R.	76358	—	
5	2	C.M. & St.P. Erie	29876 69623	B. & M.R. —		53					
6		P. & R.	17327	—		54					
7						55	12	N.Y.C.H.R.	61963	B. & M.R.	
8						56		C.M. & St.P.	62562	—	
9						57		—	46700	M.O.P.	
10	3	Erie	64029	M.O.P.		58					
11		—	72391	—		59					
12		C.M. & St.P.	29485	B. & M.R.		60	13	C.N.O. & T.P.	13979	M.O.P.	
13						61					
14						62					
15	4	C.M. & St.P.	52282	B. & M.R.		63	14	C.O.R.	6832	M.O.P.	
16		P.M.	3807	—		64		H.V.	30754	B. & M.R.	
17		C.M. & St.P.	38454	—		65		N.C.St.L.	6500	—	
18		—	29631	—		66		C.M. & St.P.	66650	—	
19		—	28937	—		67		C.C.C. & St.L.	10593	—	
20		Cin.Nor.	2373	—		68					
21						69					
22						70	16	I.M. & S.	20037	M.O.P.	
23	5	M.O.P.	17070	M.O.P.		71					
24		C.M. & St.P.	40268	B. & M.R.		72					
25						73	17	C. & O.	10836	B. & M.R.	
26						74		Gt.	13636	M.O.P.	
27	6	N.Y.C.H.R.	61085	B. & M.R.		75					
28		P.R.R.	99672	M.O.P.		76					
29		C.M. & St.P.	41414	M.O.P.		77	18	N.Y.C.H.R.	93600	B. & M.R.	
30		—	40902	—		78					
31						79					
32						80	19	M.O.P.	6472	M.O.P.	
33	8	C.M. & St.P.	49480	M.O.P.		81		—	15566	—	
34		N.Y.O. & W.	9523	B. & M.R.		82		C.I. & L.	13429	M. & O.	
35						83					
36						84					
37	9	C.M. & St.P.	43946	B. & M.R.		85	20	At. & S.F.	17241	B. & M.R.	
38		C.B. & Q.	92823	M.O.P.		86					
39		B. & O.	166170	—		87					
40		C.M. & St.P.	55098	—		88		C.M. & St.P.	68286	A.B.T.	
41		—	23264	—		89					
42		Ia.Cent.	03050	B. & M.R.		90					
43						91	22	M.O.P.	265	M.O.P.	
44						92		At.W.	15219	B. & M.R.	
45	10	M.O.P.	6368	M.O.P.		93		C.M. & St.P.	20248	—	
46						94		I.M. & S.	12020	M.O.P.	
47						95		M.O.P.	13462	—	
48	11	C.M. & St.P.	72266	B. & M.R.		96		C.M. & St.P.	16054	B. & M.R.	
TOTAL											

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 6 READS.

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This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

PER DIEM RECLAIM STATEMENT.
By Union Pacific Railroad Company
C. M. & St. P.

Inter.

Statement of Cars Switched ⁴for

R Y

at Omaha Station, Month of August 1905

Arbitrary Time Allowance _____ Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard
1						49					
2	23	C.M.& St.P.	40308	MOP		50					
3	—	—	22826	—		51					
4	—	—	49824	—		52					
5						53					
6						54					
7	24	C.M.& St.P.	60952	B.& M.R.		55					
8	C.St.P.K.C.	10074	A.Lo.W.B.		56						
9					57						
10					58						
11	25	C.M.& St.P.	62364	B.& M.R.		59					
12					60						
13					61						
14	26	D.H.Co.	18188	B.& M.R.		62					
15	C.M.& St.P.	73714	—		63						
16	—	60000	—		64						
17	—	63092	—		65						
18					66						
19					67						
20	27	Erie	6265	B.& M.R.		68					
21	C.R.I.& P.	61110	MOP		69						
22	C.M.& St.P.	50644	B.& M.R.		70						
23	C.B.& Q.	85683	—		71						
24	Erie	97222	MOP		72						
25	—	69861	—		73						
26	P.L.E.	1933	B.& M.R.		74						
27	C.B.& Q.	84752	M.& O.		75						
28					76						
29					77						
30	28	Erie	97222	MOP		78					
31	—	69861	—		79						
32	C.M.& St.P.	51152	B.& M.R.		80						
33	Ia.Cent.	08070	M.& O.		81						
34					82						
35					83						
36	29	N.Y.C.H.R.	56056	B.& M.R.		84					
37	C.M.& St.P.	41482	MOP		85						
38	MOP	27248	—		86						
39	Erie	102314	—		87						
40	C.M.& St.P.	40248	B.& M.R.		88						
41					89						
42					90						
43	30	C.M.& St.P.	14823	B.& M.R.		91					
44					92						
45					93						
46	31	C.M.& St.P.	27636	MOP		94					
47	—	49118	—		95						
48	—	43870	—		96						

Correct: Endorsed: Filed Jan 24 1907 Correct:

Geo. H. Thummel, Clerk.

Agent

R

Agent

R

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

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EXHIBIT 51.

	11th St. to Summit		Summit to So Omaha		11th St to 16th St.		16th St. to 20th st.		20th St to Summit		20th St. to So. Omaha.	
	E	W	E	W	E	W	E	W	E	W	E	W
1906												
June 11	42	54	36	52	155	141	3	2	8	2	12	3
" 12	54	59	47	42	176	162	3	3	18	9	9	6
" 13	43	52	38	41	168	150	4	3	18	7	13	8
" 14	50	59	38	49	180	171	6	8	14	4	12	3
" 15	43	59	38	48	148	139	2	1	15	5	12	5
" 16	49	55	43	45	149	140	5	3	16	10	10	6
" 17	30	36	27	30	142	139	3	4	10	2	8	2
Sunday												
Total 7 days,	311	374	267	307	1118	1042	26	24	99	39	76	33
Average per day	44-3-7	53-3-7	38-1-7	43-6-7	159-5-7	148-6-7	3-5-7	3-3-7	14-1-7	5-4-7	10-6-7	4-5-7

Endorsed: Filed Jan. 24 1907.

Geo. H. Thummel, Clerk.



828

Exhibit 53.

Chicago Great Western Railway.

Office of Superintendent.

O. Cornelisen,
Superintendent.

Clarion, Ia., Apr. 13th, 1906.

Mr. Chas. Ware,
Supt. U. P. RR., Omaha.

Dear Sir:

Our No. 1 of yesterday, April 12th, entered your tracks at U. P. transfer not over 5 minutes late and was delayed 13 minutes following a U. P. freight train from the transfer to the bridge and 30 minutes on the bridge waiting for the transfer pull to clear the west bound main track. This is rather a serious delay to an important passenger train, and is one that I suppose should have been prevented by the action of the Yard Dispatcher. Our passenger trains seem to be delayed just as much now if not more than they were before this yard dispatching plan was adopted. Will you please investigate this delay.

No. 1 on this morning made up 50 minutes running time on my division, only to lose 43 minutes of it again after passing Council Bluffs.

Yours truly,

O. CORNELISEN,
Superintendent.

Delay to C. G. W. 1 4-12

W R C 4-17-06

How?

C. W.

Stamped on the face are the following stamps, to-wit:
"Union Pacific Railroad Co. Received Apr. 17 1906 Asst. Supt's
Office, Omaha, Neb." "Union Pacific Railroad Co. Received
Apr. 17 1906 Office of Supt. Neb. Div. Omaha."

Endorsed: Filed Jan. 24, 1907. Geo. H. Thummel,
Clerk.

829

Exhibit 54.

Chicago Great Western Railway,

Office of Superintendent.

O. Cornelisen,
Superintendent.

Clarion, Ia., Oct. 26th, 1905.

Mr. Chas. Ware,
Supt., U. P. R. R., Omaha,

Dear Sir:

Our No. 21, which arrived at Omaha on the morning of Oct.
30—2564

tober 18th was held one hour at Union Station for the yard engine to take the tourist cars off the train. No 103 arriving at Union Station on the night of October 23rd was held 40 minutes for the same purpose.

I wish it were possible for some better arrangement to be made regarding this switching. Will you please have it looked into again by your depot forces.

Yours truly,

O. CORNELISEN,
Superintendent.

Stamped on the face is the following stamp, to-wit: Union Pacific Railroad Co. Received Oct. 28 1905 Office of Supt. Nev. Div. Omaha.

Endorsed: Filed Jan. 24, 1907. Geo. H. Thummel,
Clerk.

830

Exhibit 55.

Chicago Great Western Railway,
Office of Superintendent.

O. Cornelisen,
Superintendent.

Clarion, Ia., Feb. 26th, 1906.

Mr. Chas. Ware,
Supt., U. P. R. R.
Omaha, Neb.

Dear Sir:

It frequently occurs that C. & N. W. No. 76, which is due to leave Union Station at 8:28 P. M. does not get out until 8:33 or 8:35. When this occurs, and it is a common occurrence, C. G. W. No. 22 is always held to follow the Northwestern train, and in consequence is delayed at each block between Omaha and U. P. Transfer, and from 5 to 6 minutes at the transfer depot, standing behind the Northwestern train while it does its work.

Our No. 22 is always ready to leave Omaha sharp on time, and I would ask you whether it cannot be arranged with the tower-man, so that it can go when the time is up, regardless of the C. & N. W. train.

We certainly are not responsible for the latter train being late, and I do not see why our schedules should suffer on account of it. If No. 22 leaves at 8:30, the chances are the Northwestern train would not be delayed a minute from the Union Station to the transfer depot, as we do not have any business at the transfer depot, you will readily see that we are very soon out of the way. Will you please let me know if you can do anything to relieve this situation.

Last night our train was five minutes late leaving the

Stamped on the face as follows, to-wit: Union Pacific Railroad Co. Received Feb 28, 1906. Office of Supt. Neb. Div. Omaha.

Endorsed: Filed Jan. 24, 1907. Geo. H. Thummel,
Clerk.

S31 Exhibit 56.

Chicago Great Western Railway.
Office of Superintendent.

O. Cornelisen,
Superintendent.

Clarion, Ia., Feb. 26th, 1906.

Mr. Chas. Ware No. 2.

Depot on account of the Northwestern train leaving after we were due. This was followed by delays aggregating 8 minutes at block signals, and 9 minutes at the transfer depot standing behind the northwestern train, while it did its regular work. This means that we left Council Bluffs 22 minutes late, when we should have left there on time, had we not been held back to give C. & N. W. No. 76 a clear track.

Yours truly,

O. CORNELISEN,
Superintendent.

Endorsed: Filed Jan. 24, 1907. Geo. H. Thummel,
Clerk.

S32 Exhibit 57.

Chicago Great Western Railway.
Office of Superintendent.

O. Cornelisen,
Superintendent.

Clarion, Ia. Jan. 29th, 1906.

Mr. Chas. Ware,
Supt. U P R. R. Omaha.

Dear Sir:—On the morning of January 23rd, our No. 4, which is due to leave Omaha at 5:05 A. M. was delayed 32 minutes between Missouri River Bridge, and the U P transfer, by U P yard engine 1278, handling a string of bad order passenger equipment.

This is rather a serious delay, and it seems to me as poor judgment in starting out of Omaha with a train of this kind immediately ahead of a passenger train.

Will you please investigate and advise result.

Yours truly,

O. CORNELISEN, Superintendent.

Endorsed: Filed Jan. 24 1907. Geo. H. Thummel, Clerk.

Exhibit 58.

833

Nov. 26, 1904.

Mr. W. A. Deuell, Supt.,
U P R R C.,
Omaha, Neb.

Dear Sir:—As our No. 103 was approaching U P Transfer on the evening of Nov. 24th, Northwestern Bridge run pulled by Engine 847 pulled right in ahead of our passenger train and continued on to Omaha ahead of it, causing No. 103 to stop at the block stations and delaying them from 7 to 10 minutes. It seems to me that a passenger train is entitled to more consideration from these transfer men.

Yours truly,

11-28-04.

O. CORNELISEN, Superintendent.

Chas. Ware

How?

W. A. D.

Book 257.

Stamped on face is the following stamp, to-wit: Union Pacific Railroad Co. Received Nov 27 1904, Office of Supt Neb Div. Omaha.

Endorsed: Filed Jan. 24, 1907. Geo. H. Thummel, Clerk.

Exhibit 59.

40

834

Jan. 11th, 1905.

Mr. W. A. Deuel, Supt.,
Union Pacific R. R. Co.,
Omaha, Neb.

Dear Sir:—The delay that I call attention to under date of Dec. 24th is not an imaginary one by any means, but one that actually occurred. The conductor of this train claims that the towerman gave him the signal at 7:35 but as they were waiting for the mail to arrive from the west, they were not ready to leave until 7:45 and that from that time, it was 25 minutes before the towerman again gave our train the signal. During this time there was a Union Pacific switch engine moving back and forth over the lead handling passenger cars. It seems very strange to me that none of the men connected with the handling of trains at the Union Station on that morning know anything about this delay.

Yours truly,

O. CORNELISEN, Superintendent.

Book 260.

Stamp on face is as follows: Union Pacific Railroad Co. Received Jan. 13 1905 Office Supt Neb Div. Omaha—Written with red pencil on face as follows: Delay to C G W 104 12-23 Keeshen pls run this down & advise. W. A. D. 1-13.

Endorsed: Filed Jan 24 1907. Geo. H. Thummel, Clerk.

Exhibit 60.

67

835 9-22 E Haney, How?
C. W.

Sept. 20th, 1905.

Mr. Chas. Ware,
Supt. U P Omaha.

Dear Sir:—Our train No. 2 last night was blocked 17 minutes at Union depot after they were due to leave. Will you kindly investigate and advise.

Yours truly,

O. CORNELISEN, Superintendent.

Book 276.

Stamps on face are as follows: Union Pacific Railroad Co. Received Sep 22 1905. Office of Supt. Neb Div. Omaha—Union Pacific Railroad Co. Received Sep 22 1905. Office of Supt. Neb Div Omaha.

Creston, Iowa, September 21, 1905.

Mr. W. A. Deuel,
Supt U P Omaha,

Dear Sir:—Our train No. 13, Sept. 17th, was delayed 21 minutes by block between U P transfer and Omaha on account of your switch crew engine 1205 ahead with a very heavy train of freight cars. Could this train not have waited until our passenger train got past them.

Yours truly,

W R C 9-22 Please investigate.
C W

Endorsed: Filed Jan. 24, 1907. Geo. H. Thummel,
Clerk.

836

Exhibit 61.

487

Clarion, Ia, July 21, 1904.

Mr. W. A. Deuell, Supt.,
U P R R Co.,
Omaha, Neb.

Dear Sir: I would call your attention to the following

serious delays to our passenger train 104 which leaves Union Station at 7:35 A M daily.

July 17th—25 mins. at U P Transfer, account being blocked by other trains.

July 18th—2 minutes at Union Station and 3 minutes at U P Transfer, account blocked by other trains.

July 19th—16 minutes between Omaha and U P Transfer account blocked behind other trains.

July 20th—15 minutes at U P Transfer, account blocked.

This for your information.

Yours truly,

O. CORNELISEN, Superintendent.

7-23-04.

Mr. O. Cornelisen: Please advise whether on time or behind time in each instance, also such information as you may have that will assist us to identify trains ahead.

W. A. DEUEL,

Book 250.

Stamped on face as follows: Union Pacific Railroad Co. Received Jul 22, 1904—Office of Supt. Neb Div. Omaha.

Endorsed: Filed Jan. 24, 1907. Geo. H. Thummel, Clerk.

837

Exhibit 62.

422

Complaint from C. G. W.

Sept. 15, 1905.

Mr. Chas. Ware,
c-o Union Pacific R. R.
Omaha, Neb.

Dear Sir: Our No. 4, which left Union Station 5:05 this morning was delayed 45 minutes between Omaha and Council Bluffs by Un. Pac. Extra with engine No. 1823 and about sixty freight cars. It seems the tower man held our No. 4 in the depot yard while the freight train was allowed to pull out on the double track ahead.

It seems to me this delay was entirely avoidable and should not have occurred. I would thank you to investigate it at once and advise me result.

Yours truly,

Superintendent.

C G W train 4 9-15

9-17-05

E W K

Please get statement from towerman.

C W

Book 275

Stamp on face is as follows: Union Pacific Railroad Co. Received Sep 16 1906. Office of Supt. Neb Div. Omaha.

Endorsed: Filed Jan 24, 1907. Geo. H. Thummel,
Clerk.

838 Thereupon afterwards, to-wit: On the 9th day of November 1906 Memorandum Opinion was filed in said case, which said Memorandum Opinion is in words and figures following, to-wit:

In the Circuit Court of the United States for the District
of Nebraska.

Mason City & Fort Dodge Railroad Company, Complainant,
No. 55-V. v.

Union Pacific Railroad Company, Defendant.

Memorandum Opinion.

This is a proceeding charging defendant with contempt of this court in violating an order of injunction heretofore granted in the case, in that it has refused to permit the complainant and its lessees to pass with its train or engine and car from the track of the Union Pacific Railroad Company, at South Omaha, on to the track of the Rock Island which connects with the Union Pacific Railroad at South Omaha.

The defendant does not deny the specific act complained of, to-wit: preventing the complainant from running its engine and cars off from the track of the Union Pacific Railroad Company and on to the track of the Rock Island at South Omaha, but it contends that the order of this court heretofore entered did not require it to permit the complainant company to run its train and cars off from the road of the defendant company and on to the road of the Rock Island or any other road. Its contention is that the order of the Court only required it to grant a physical connection between the track of the

839 Union Pacific Railroad Company and the track of the Rock Island Company.

To this interpretation I cannot assent. The purpose of the bridge act, as construed by the Supreme Court of the United States, was to enable a railroad company having a line of railroad upon one side of the Missouri River at Council Bluffs or Omaha to use the portion of the defendant company's road between Council Bluffs and South Omaha in the operation of its trains either as through trains upon its own lines owned and operated upon both sides of the river, or to operate its trains upon another connecting line upon the opposite side of the river as such different roads might agree upon. In other words, while the complainant company, probably, could not compel the Rock Island Company to permit it to operate its trains upon the track of the Rock Island west from South

Omaha, yet, the object and purpose of the bridge act, as construed by the Supreme Court, was to require the defendant company to permit the complainant company to enter with its trains upon its tracks at Council Bluffs, operate the same over the track of the Union Pacific to South Omaha, and pass upon the track of the Rock Island at South Omaha, if the Rock Island would permit it to use its tracks at South Omaha. To simply say that it meant a physical connection, only, between the track of complainant and the track of defendant, but did not permit the use of the defendant's track by the trains of the complainant to go upon the same at Council Bluffs and pass off from the same at South Omaha, either on its own or some other company's track, with which it had arrangements, would defeat the very purpose and intent of the act.

The decree entered in this case, and which was affirmed in the Circuit Court of Appeals and the Supreme Court, clearly granted permission to the complainant company to enter with its trains upon the track of the defendant company at Council Bluffs to operate its trains over the defendant's road between Council Bluffs and South Omaha, and off from the tracks of the defendant company's road at South Omaha upon its own track or the track of some other company connecting therewith. The cases of *Altoona P. Connecting R. Co. v. Beech Creek R. Co.* 35 Atlantic, 734, and *Atchison Topeka & Santa Fe R. Co. v. Denver & New Orleans R. Co.*, 110 U. S., 667, construing the term "connecting with," are not applicable and controlling, as in those cases it was sought to compel the other roads to make certain traffic arrangements. The question involved in those cases was not like the question at bar. In those cases the statute and constitutional provision only provided that one road should permit another road to cross or connect its track with the track of the other road. In the present case, by the decisions of the Court of Appeals and Supreme Court, the defendant company is not only required to connect its tracks, but permit other companies to use the track in operating their trains between Council Bluffs and South Omaha to a connection with other roads. The use of the track for the passage of its trains to a connection involves the entering upon the track of the defendant company and going off from it.

It follows that the defendants are guilty of contempt in violating the order of injunction. As it appears, however, that the act complained of was committed in good faith, under the belief that the order of this court did not require them to permit the complainant company to deliver cars to the Rock Island Company upon the Rock Island tracks at South Omaha, and

that the purpose of the parties is to obtain a judicial construction of the decree in this respect, the punishment will be nominal, and a fine of one hundred dollars imposed upon the
841 defendants jointly. The complainant will prepare journal entry, submit it to counsel for defendant, and present same to this court on the 13th, when final judgment will be entered.

A petition and application for a modification of the former decree has been filed by the defendant company. To this the complainant has entered a special appearance to set aside the service of the subpoena. The motion of complainant in this respect will be overruled.

The question of the modification of the decree was argued by counsel. For that reason, I suppose it was intended that the court should pass upon that question if the service was held to be good.

The decree cannot be modified to the extent that defendant asks. The decree as entered by this court has been affirmed by the Supreme Court and is beyond the power of this court to now modify, excepting as authorized by the Supreme Court. That court, in its opinion, says:

"It is contended that the terms of the decree are too broad; that they give to the Mason City Company not merely the use of the bridge and its approaches, including therein connections with western roads terminating at Omaha, but also the use of all side or spur tracks connecting the Union Pacific Railroad with private industries, and the track extending northward from the main line of the Union Pacific to the old ferry crossing. On the argument the counsel for the appellee stated that his company made no claim to a right to use these tracks. If the language of the decree is open to this misconception it should be corrected, and the Circuit Court may make such correction on proper application."

While it is true that the mandate which came from the Supreme Court simply affirmed the decree, and no authority in the mandate is given to correct or modify the decree, I am disposed to act upon the authority given by the opinion.

842 While I do not think a proper construction of the decree authorizes the Mason City Company to use the spur tracks of the defendant company running to private industries and warehouses, yet, that there may be no doubt about it, a supplemental decree may be prepared, simply providing that it is not the intent and purpose of the decree to permit the complainant company to use the side or spur tracks of the defendant company which connect with private industries, or the track extending northward from the main line of the Union Pacific to the old ferry crossing. Such being the proper con-

struction of the decree, no harm can result from a supplemental decree so construing it. Counsel for defendant company will prepare such supplemental decree, submit same to counsel for complainant, and present same to this court on the 13th.

Endorsed: Filed Nov. 9, 1906. Geo. H. Thummel, Clerk.

843 Thereupon afterwards, to-wit: At the November 1906 term of said court and on the 21st day of December, 1906, supplemental decree was signed and filed in said case and duly entered of record in Journal No. 5 of said court, to-wit:

Mason City & Ft. Dodge Railroad Company, Complainant,
vs.
Union Pacific Railroad Company, Defendant.

Whereas this court did on the 12th day of August, 1903, render and enter a final decree in the above entitled action against the Union Pacific Railroad Company, granting the complainant the full, equal and joint use of certain tracks, depot and facilities of the Union Pacific Railroad Company situated in Council Bluffs, Iowa, and Omaha, Nebraska, as appears more particularly by said decree, reference to which is hereby made for greater certainty; and

Whereas, a writ of injunction was duly issued out of this court and served upon the Union Pacific Railroad Company on the 13th day of August, 1903, enforcing said decree, to which reference is hereby made for greater certainty;

And whereas, said Union Pacific Railroad Company, appealed said action to the Circuit Court of Appeals of the United States in and for the Eighth Circuit, which said decree was by the opinion and judgment of said court duly affirmed;

And whereas, said defendant appealed said case to the Supreme Court of the United States and said decree was by said court duly affirmed and the mandate of said court duly issued and filed in the office of the Clerk of the United States Circuit Court for the District of Nebraska, at Omaha, Nebraska, which said mandate affirmed said decree in all particulars:

844 That in and by the opinion of the said court, it was among other things, said:

"It is contended that the terms of the decree are too broad; that they give to the Mason City Company, not merely the use of the bridge and its approaches, including therein connections with Western roads terminating at Omaha, but also the use of all side or spur tracks connecting the Union Pacific Railroad with private industries, and the track extending northward from the main line of the Union Pacific to the old ferry

crossing. On the argument counsel for the appellee stated that his company made no claim to a right to use these tracks. If the language of the decree is open to this misconstruction it should be corrected, and the Circuit Court may make such correction on proper application. Decree affirmed."

And whereas, the Mason City and Fort Dodge Railroad Company has filed a disclaimer in this court, disclaiming any right to the use of the side or spur tracks connecting the Union Pacific railroad with private industries and the track extending northward from the main line of the Union Pacific to the old ferry crossing;

Now therefore, to the end that there may be no misconception as to the meaning of said decree, it is

Ordered, adjudged and decreed that the motion of the complainant to set aside the service of the subpoena be and the same is hereby denied;

That in the opinion of the court the decree does not grant to the complainant—and complainant makes no claim thereunder, to the use of the side or spur tracks connecting the Union Pacific railroad with private industries and the
845 track extending northward from the main line of the Union Pacific to the old ferry crossing; and

That it was not the intent and purpose of the decree and the decree cannot be construed to permit the complainant to use the side or spur tracks of the defendant which connect with private industries or the said track extending northward from the main line of the Union Pacific to the old ferry crossing.

W. H. MUNGER, Judge.

Endorsed: Filed Dec. 21 1906. Geo. H. Thummel, Clerk.

Thereupon afterwards, to-wit: At the November
846 1907 Term of said Court and on the 21st day of December, 1906, the following Decree was signed and filed in said case and duly entered of record in Journal No. 5 of said Court, to-wit:

Mason City & Ft. Dodge Railroad Company, Complainant,
vs.

Union Pacific Railroad Company, Defendant.

The Mason City & Ft. Dodge Railroad Company, complainant, having on the 21st day of May, 1906, filed its petition, duly verified, alleging among other things that Union Pacific Railroad, defendant, A. L. Mohler, the General Manager of said company, J. M. Henry, the yardmaster of said company, and Henry Swagtek, switch tender of said company, had violated

the decree and writ of injunction heretofore issued in this cause, and

This court having on the said 21st day of May, 1906, issued an order that the Union Pacific Railroad Company, defendant, A. L. Mohler, General Manager of said company, J. M. Henry, the Yardmaster of said company and Henry Swagtek, switch-tender of said company, and each of them show cause before this Court on the 2nd day of June, 1906, why they and each of them should not be adjudged guilty of contempt of this court and punished for violating the said decree and writ of injunction, and

Due service of the said order to show cause having been made upon the said Union Pacific Railroad Company, defendant, and A. L. Mohler, the General Manager of said company, J. M. Henry, yardmaster of said company and Henry Swagtek, switch tender of said company in accordance with the terms of
847 said order, and

Said Defendant, Union Pacific Railroad Company and said A. L. Mohler, General Manager of said company, J. M. Henry, yardmaster of said company and Henry Swagtek, switch tender of said company having each and all duly filed their answers and return to the said order to show cause, and this court having heard the evidence introduced by the complainant in support of its said petition, as well as the evidence introduced by the Union Pacific Railroad Company, defendant, A. L. Mohler, General Manager of said company, J. M. Henry, Yardmaster of said company, and Henry Swagtek, switch tender of said company, in support of their said several answers and returns, and the court having heard the argument of solicitors for the complainant, as well as the argument on behalf of said Union Pacific Railroad Company, defendant, A. L. Mohler, General Manager of said Company, J. M. Henry, yardmaster of said company, and Henry Swagtek, switch tender of said company, and the Court having duly considered the same,

The Court finds that the allegations in the complainant's petition with reference to the decree heretofore entered herein, and with reference to the injunction heretofore allowed in this case, are true.

The Court further finds that there is a physical connection between the tracks of the Chicago, Rock Island & Pacific Railway Company and the main tracks of the Union Pacific Railroad Company at South Omaha, Nebraska.

The Court further finds that under the terms of the decree as heretofore entered and allowed in this case, the complainant herein has the right to run its engines, cars or trains over the Union Pacific Railroad Company's tracks through and over the connection between the tracks of the Chicago, Rock Is-
848 land & Pacific Railway Company and the Union Pacific Railroad Company onto the tracks of the Chicago, Rock

Island & Pacific Railway Company, or from the tracks of the Chicago, Rock Island & Pacific Railway Company over and through the said connection onto the tracks of Union Pacific Railroad Company at South Omaha, Nebraska.

The court further finds that by the terms of the injunctive order heretofore allowed in this cause, the said Union Pacific Railroad Company and its agents and servants were prohibited and enjoined from interfering in any way with the full, equal and joint use of the tracks and crossings above described;

That on April 27, 1905, the plaintiff attempted to take a car loaded with cement, drawn by an engine, from the tracks of Union Pacific Railroad Company onto the tracks of the Chicago, Rock Island & Pacific Railroad Company, where the same are connected with the tracks of the Union Pacific Company at South Omaha, Nebraska.

That Union Pacific Railroad Company, defendant, and its agents, A. L. Mohler, General Manager, J. M. Henry, Yardmaster and Henry Swagtek, Switch Tender, by force prevented the said complainant from passing over the connection between the tracks of the Chicago, Rock Island & Pacific Railway Company and Union Pacific Railroad Company.

That the said Union Pacific Railroad Company, A. L. Mohler, General Manager of said Company, J. M. Henry, Yardmaster of said Company and Henry Swagtek, Switch Tender of said company are guilty of contempt in so preventing the said complainant from passing from the tracks of the Union Pacific Railroad Company to the tracks of the Chicago, Rock Island & Pacific Railway Company, over the connection between the said tracks, and that the said act is in violation of the order of injunction heretofore entered in this case.

The court further finds that the said act, however, was committed in good faith, under the belief that the order of this court did not require it, or them, to permit the complainant company to deliver cars to the Chicago, Rock Island & Pacific Railway Company upon the tracks of the latter company at South Omaha.

It is therefore considered, adjudged and decreed by the court that the said Union Pacific Railroad Company, defendant, A. L. Mohler, General Manager of said company, J. M. Henry, Yardmaster of said company and Henry Swagtek, switch-tenders of said company, jointly pay one hundred dollars fine and the costs of this proceeding.

Whereupon the said defendants, and each of them, excepted to the above decree and to each and every finding therein contained separately and severally and each prayed an appeal therefrom to the United States Circuit Court of Appeals for the Eighth Circuit, which is hereby allowed in open court.

Dated this 21st day of December, 1906.

W. H. MUNGER, Judge.

Endorsed: Filed Dec. 21, 1906. Geo. H. Thummel, Clerk.

Thereupon afterwards, to-wit: On the 21st day of
850 December, 1906, an assignment of errors was filed in
said case which said assignment of errors is in words and
figures following, to-wit:

In the Circuit Court of the United States within and for the
District of Nebraska.

Mason City & Fort Dodge Railroad Company, Complainant,
vs.

Union Pacific Railroad Company, et al., Defendants.

Assignment of Errors.

Now on this 21st day of December, 1906, comes the defend-
ants, Union Pacific Railroad Company, A. L. Mohler, J. M.
Henry, and Henry Swagtek, by their solicitors, John N. Bald-
win and Edson Rich, and they say that there is manifest error
in the record, proceedings and decree in the said cause, and that
the decree is erroneous and against the just rights of the said
defendants for the following reasons.

1st. That the court erred in finding on the issues joined, in
favor of the complainant.

2nd. That the court erred in finding on the issues joined
against the defendants.

3rd. That the court erred in finding that under the terms
of the decree originally entered in this cause, the complainant
has the right to run its engines, cars or trains, over and
through the connection between the tracks of Union Pacific
Railroad Company and the Chicago, Rock Island & Pacific
Railway Company at South Omaha, Nebraska.

851 4th. That the court erred in finding that Union Pa-
cific Railroad Company, its agents and servants, were
prohibited and enjoined by the order of injunction in this case,
from interfering in any manner with the use by the complain-
ant of the crossover between the tracks of the defendant, Union
Pacific Railroad Company and the tracks of the Chicago, Rock
Island & Pacific Railway Company at South Omaha, Nebraska.

5th. That the court erred in finding that Union Pacific Rail-
road Company, A. L. Mohler, General Manager of said com-
pany, J. M. Henry, Yardmaster of said company, and Henry
Swagtek, switch-tender of said company, were guilty of con-
tempt in preventing the said complainant from moving its en-
gines, trains and cars from the tracks of Union Pacific Rail-
road Company to the tracks of the Chicago, Rock Island & Pa-

cific Railway Company over the connection between the said tracks at South Omaha, Nebraska, and in finding that the said act was in violation of the order of injunction theretofore entered in this place.

6th. That the Court erred in decreeing that the said Union Pacific Railroad Company, A. L. Mohler, General Manager of said company, J. M. Henry, Yardmaster of said company, and Henry Swagtek, switch-tender of said company, should jointly pay a fine of one hundred dollars and the costs of the proceedings in said case.

Wherefore, the defendants pray that the said decree may be reversed and that they may have an adjudication and decree in their favor.

**UNION PACIFIC RAILROAD
COMPANY,**

A. L. MOHLER,
General Manager of Union Pacific
Railroad Company,

J. M. HENRY,
Yardmaster of Union Pacific
Railroad Company,

HENRY SWAGTEK,
Switch-tender of Union Pacific
Railroad Company,

By John N. Baldwin, Edson Rich,
Their Solicitors.

Endorsed: Filed Dec. 21, 1906. Geo. H. Thummel,
Clerk.

852 Thereupon afterwards, to-wit: On the 21st day of December, 1906, a Petition for Appeal was filed in said case, which said Petition for Appeal is in words and figures following to-wit:

In the Circuit Court of the United States within and for the District of Nebraska.

Mason City & Fort Dodge Railroad Company, Complainant,
vs.

Union Pacific Railroad Company, et al., Defendants.

Petition for Appeal.

To the Hon. W. H. Munger Judge of the Circuit Court of the United States within and for the District of Nebraska:

The defendants herein, Union Pacific Railroad Company A. L. Mohler, General Manager of said Company, J. M. Henry, Yardmaster of said company and Henry Swagtek, Switch-

tender of said Company, conceiving themselves aggrieved by the final decree made and entered on the 21st day of December, 1906, in the above entitled cause, do hereby appeal from the several orders and decree, to the United States Circuit Court of Appeals for the Eighth Circuit, for the reasons specified in the Assignment of Error which is filed herewith, and the defendants pray that this appeal may be allowed, and that a transcript of the record proceedings and papers upon which the said order and decree was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Eighth Circuit.

UNION PACIFIC RAIL-
ROAD COMPANY,

A. L. MOHLER,

J. M. HENRY,

HENRY SWAGTEK.

By John N. Baldwin,

Edson Rich,

Their Solicitors.

Endorsed: Filed Dec 21 1906. Geo. H. Thummel
Clerk.

853 Thereupon afterwards, to-wit: On the 21st day of
December 1906, an Appeal Bond was filed in said case,
which Said Appeal Bond is in words and figures following,
to-wit:

In the Circuit Court of the United States within and for the
District of Nebraska.

Mason City & Fort Dodge Railroad Company, Complainant,
vs.

Union Pacific Railroad Company, et al., Defendants.

Appeal Bond.

Know All Men by These Presents, that we, Union Pacific Railroad Company, A L Mohler, General Manager of said company J M Henry, Yardmaster of said company and Henry Swagtek, Switch-tender of said company, as principals, and Luther Drake, of Omaha, Nebraska, as surety, are held and firmly bound unto Mason City & Fort Dodge Railroad Company, in the full and just sum of Five Hundred & no-100 dollars, to be paid to said Mason City & Fort Dodge Railroad Company, its successors or assigns, to which payment, well and truly to be made we hereby bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

The condition of this obligation is such

That whereas, lately at the November term 1906 of the Circuit Court of the United States for the District of Nebraska in a suit pending in said Court between Mason City & Fort Dodge Railroad Company and the said Union Pacific Railroad Company, A L Mohler, General Manager of said company, J M Henry, Yardmaster of said company, and Henry Swagtek, Switch-tender of said company, a decree was rendered against the said Union Pacific Railroad Company, A L Mohler, General Manager of said Company, J M Henry, Yardmaster of said company, and Henry Swagtek Switch-tender of said company and the said Union Pacific Railroad Company, A L Mohler, J M Henry and Henry Swagtek having obtained an appeal and filed a copy thereof in the office of the clerk of the said court, to reverse the decree in the aforesaid suit, and a citation directed to the said defendants, directing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Eight Circuit, to be held in the city of St. Louis, State of Missouri ————days from and after the date of the said citation;

Now therefore, if the said Union Pacific Railroad Company, A L Mohler, General Manager of said Company, J M Henry Yardmaster of said company and Henry Swagtek, Switch-tender of said company, shall prosecute their appeal to effect and answer all damages and costs if they fail to make good their plea, then the above obligation to be null and void, otherwise to remain in full force and effect.

Witness our hands this 21st day of December, 1906.

UNION PACIFIC RAIL-
ROAD COMPANY,

A. L. MOHLER,

J. M. HENRY,

HENRY SWAGTEK,

Principals.

By Edson Rich,

Their Solicitors.

EDSON RICH, Surety.

The within bond and the above named surety are hereby approved this 21st day of December, 1906.

W. H. MUNGER, Judge.

Endorsed: Filed Dec 21 1906. Geo. H. Thummel
Clerk.

Thereupon afterwards, to-wit: On the 21st day of December, 1906, Citation was duly signed in said case, and returned and filed on the 21st day of December, 1906, with

acceptance of service endorsed thereon, the following of which is the original:

856 Citations—U. S. C. C. Appeals. (Appeal)

The United States of America.

To Mason City & Ft. Dodge Railroad Company—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this Citation bears date, pursuant to an appeal, filed in the Clerk's office of the Circuit Court of the United States for the district of Nebraska, wherein Union Pacific Railroad Company, A. L. Mohler, J. M. Henry and Henry Swagtek are appellants, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Wm. H. Munger, Judge of the District Court of the United States for the District of Nebraska, this 21st day of December in the year of our Lord one thousand nine hundred and six.

W. H. MUNGER,
United States District Judge, for the District of
Nebraska.

Service of the within Citation is hereby accepted this 21st day of December, A. D. 1906.

W. D. McHUGH,
Attorney for Plaintiff.

No. 55. Doc. V. United States Circuit Court, District of Nebraska. Mason City & Ft. Dodge R. R. Co. vs. Union Pacific R. R. Co. Citation. Filed Dec. 21, 1906, Geo. H. Thummel, Clerk.

857 Thereupon afterwards, to-wit: At the November 1906 Term of said Court, and on the 4th day of February, 1907, the following Order was signed and filed in said case, and duly entered of record in Journal No. 6 of said Court, to-wit:

Mason City & Fort Dodge Railroad Company,
No. 55 vs. Docket "V".
Union Pacific Railroad Company.

It is ordered that the following original Exhibits used as evidence in the above entitled action may be sent up to the

United States Circuit Court of Appeals, as provided by Statute:

Exhibit "1," Blue Print, Railroad and Industrial Map of Omaha.

Exhibit "2," Employes Time Table, U. P. R. R. Co. No. 123.

Exhibit "3", Blue Print, No. 5502, of Block signals.

Exhibit "4", Train movements, Summit, South Omaha & Omaha.

Exhibit "5", Blue Print, Station grounds of C & G W Ry.

Exhibit "16", Dispatcher's Train sheet, June 14.

Exhibit "17", Dispatcher's Train sheet, June 17.

Exhibit "18", Dispatcher's Train sheet, June 12.

Exhibit "19", Dispatcher's Train sheet, June 16.

Exhibit "20", Dispatcher's Train sheet, June 13.

Exhibit "21", Dispatchers Train sheet, June 11.

Exhibit "22", Dispatcher's Train sheet, June 15.

W. H. MUNGER, Judge.

Endorsed: Filed Feb. 4, 1907. Geo. H. Thummel,
Clerk.

857½ Thereupon afterwards, to-wit: On the 13th day of February, 1907, Praeipe for Transcript was filed in said case, which said Praeipe is in words and figures following, to-wit:

United States Circuit Court, District of Nebraska.

Mason City & Fort Dodge Railroad Company,

vs.

Union Pacific Railroad Company.

Praeipe for Transcript.

To the Clerk of said Court:

Please prepare Transcript for the Circuit Court of Appeals in the above entitled cause, and include therein the following:

1. Decree entered Aug. 12, 1903.
2. Petition for Order to show cause for Contempt.
3. Order to show cause for Contempt.
4. Petition and application for modification of Decree.
5. Answer and Showing of A. L. Mohler, et al.
6. Answer of U. P. R. R. Co.
7. Chancery Subpoena.
8. Compls Answer to Petition and Application.
9. Disclaimer of Mason City & Ft. Dodge R. R. Co.
10. Replication.
11. Testimony of witnesses.

12. All exhibits.
13. Memorandum Opinion.
14. Supplemental Decree.
15. Decree (for Contempt).
16. Assignment of Errors.
17. Petition for Appeal.
18. Appeal Bond.
19. Citation.
20. Order as to Original Exhibits.
21. Praecipe for Transcript.
22. Certificate of Clerk.

EDSON RICH,
Attorney for Defendant.

Endorsed: Filed Feb. 13, 1907, Geo. H. Thummel,
Clerk.

858 United States of America,
District of Nebraska—ss.

I, Geo. H. Thummel, Clerk of the Circuit Court of the United States for the District of Nebraska, do hereby certify that pursuant to the order of Court, and in compliance with the Praecipe, a copy of which is found on page 857½ hereof, the foregoing record has been made; and that the same is a true and faithful transcript of the pleadings and proceedings of record and on file in said Court as mentioned in said Praecipe, and as indicated in the foregoing index, in the case of Mason City & Ft. Dodge Railroad Company vs. Union Pacific Railroad Company, No. 55 Docket "P," and that a copy of the Citation duly certified has been lodged and remains in my said office as such Clerk.

Seal
United States
Circuit Court
District of
Nebraska.

Witness my hand and the seal of said
Circuit Court, at Omaha, in said
District this 13th day of February,
1907.

GEO. H. THUMMEL, Clerk.

Filed Feb. 15, 1907. John D. Jordan, Clerk.

(Appearance of Mr. John N. Baldwin and Mr. Edson Rich, as Counsel for Appellants.)

On the nineteenth day of February, A. D. 1907, the appearance of Mr. John N. Baldwin and Mr. Edson Rich, as counsel for appellants, was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2564.

UNION PACIFIC RAILROAD COMPANY ET AL., Appellants,
vs.
MASON CITY AND FORT DODGE RAILROAD COMPANY.

The Clerk will enter my appearance as Counsel for the Appellants.
JOHN N. BALDWIN.
EDSON RICH.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2564. Union Pacific Railroad Company *et al.*, Appellants, *vs.* Mason City and Fort Dodge Railroad Co. Appearance. Filed Feb. 19, 1907. John D. Jordan, Clerk. John N. Baldwin, Edson Rich, Counsel for Appellants.

(Appearance of Mr. Frank B. Kellogg and Mr. William D. McHugh, as Counsel for Appellee.)

And on the fifteenth day of April, A. D. 1907, the appearance of Mr. Frank B. Kellogg and Mr. William D. McHugh, as counsel for appellee, was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2564.

UNION PACIFIC RAILROAD COMPANY ET AL., Appellants,
vs.
MASON CITY AND FORT DODGE RAILROAD COMPANY.

The Clerk will enter my appearance as Counsel for the Appellee.
FRANK B. KELLOGG.
WILLIAM D. MCHUGH.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2564. Union Pacific Railroad Company *et al.*, Appellants, *vs.* Mason City and Fort Dodge Railroad Co. Appearance. Filed Apr. 15, 1907, John D. Jordan, Clerk. Frank B. Kellogg, William D. McHugh, Counsel for Appellee.

(Appearance of Mr. N. H. Loomis, as Counsel for Appellants.)

And on the twenty-sixth day of May, A. D. 1908, the appearance of Mr. N. H. Loomis, as counsel for appellants, was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2564.

UNION PACIFIC RAILROAD COMPANY ET AL., Appellants,
vs.

MASON CITY AND FORT DODGE RAILROAD COMPANY.

The Clerk will enter my appearance as Counsel for the Appellants.

N. H. LOOMIS.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2564. Union Pacific Railroad Co. *et al.*, Appellants, *vs.* Mason City and Fort Dodge Railroad Company. Appearance. Filed May 26, 1908, John D. Jordan, Clerk. N. H. Loomis, Counsel for Appellants.

(Order of Submission.)

And on the twenty-second day of May, A. D. 1908, in the record of the proceedings of said Circuit Court of Appeals is an order of submission in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1908.

FRIDAY, May 22, 1908.

No. 2564.

UNION PACIFIC RAILROAD COMPANY ET AL., Appellants,
vs.

MASON CITY AND FORT DODGE RAILROAD COMPANY.

Appeal from the Circuit Court of the United States for the District of Nebraska.

This cause having been specially assigned for this day and being now called for hearing, argument was commenced by Mr. N. H. Loomis for appellants, continued by Mr. Frank B. Kellogg for appellee and concluded by N. H. Loomis for appellants.

Thereupon, this cause was submitted to the Court on the transcript of record from said Circuit Court and the briefs of counsel filed herein.

(Opinion.)

And on the first day of December, A. D. 1908, the opinion of said United States Circuit Court of Appeals for the Eighth Circuit was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, September Term, A. D. 1908.

No. 2564.

UNION PACIFIC RAILROAD COMPANY ET AL., Appellants,
vs.

MASON CITY AND FORT DODGE RAILROAD COMPANY, Appellee.

Appeal from the Circuit Court of the United States for the District of Nebraska.

Mr. N. H. Loomis, (Mr. John N. Baldwin and Mr. Edson Rich were with him on the brief) for appellants.

Mr. Frank B. Kellogg and Mr. W. D. McHugh, (Mr. Cordenio A. Severance was with them on the brief) for appellee.

Before Sanborn and Hook, Circuit Judges, and Amidon, District Judge.

Syllabus.

1. RAILROADS—JOINT USE OF TRACKS OF UNION PACIFIC AT OMAHA—CONSTRUCTION OF DECREE FOR.—By the decree of 1903 the court adjudged to the Mason City and Fort Dodge Railroad Company and to its lessee, the Chicago Great Western Railway Company, for reasonable compensation, the joint and equal use of the main and passing tracks of Union Pacific Railroad Company from their eastern terminus in Council Bluffs to a connection with the Union Stock Yards Railroad and the other railroads connecting with the Union Pacific Railroad at or near South Omaha, of the latter's bridge across the Missouri River and of the connections of its tracks with the tracks of the union stock yards and with the tracks of all other railways which were then, or might thereafter be, connected with the tracks of the Pacific Company at or near South Omaha to the same extent stated in the contracts of the Pacific Company with the Rock Island Company, the St. Paul Company and the Northwestern Company. There was no express limitation of this use in those contracts, or in the decree, to a use for the transportation of through cars moving across the river. The Mason City Company has a freight yard and a grain yard which was constructed after the decree in or near Omaha, its only access to which is over the tracks of the Pacific Company.

Held: The decree of 1903 adjudged to the Mason City Company the use of the tracks of the Pacific Company specified and of the connections of those tracks with other railroads at or near South Omaha and at Council Bluffs to move with its own engines from its railroad east of Council Bluffs cars destined to railroads south and west of Omaha connected with the tracks of the Pacific Company at or near South Omaha and also to move with its own engines freight cars to and from its freight yard and grain yard in or near Omaha from and to other railroads connected at or near South Omaha and at Council Bluffs with the tracks of the Pacific Company specified in the decree, although such movements are not necessary to complete or to effect through transportation of such cars over the river.

2. DECREE—PRESUMPTION OF NO LIMITATION FROM ABSENCE OF EXPRESSED RESTRICTION.—The absence from a decree of any limitation or exception to general terms of plain significance raises a persuasive legal presumption that the court intended to make none.
3. DECREE—MODIFICATION BY CONSTRUCTION—EVIDENCE TO WARRANT MUST BE CONCLUSIVE.—When the terms of a decree are plain and free from ambiguity their ordinary meaning and effect may not be lawfully extended or contracted by construction in the absence of proof to a reasonable certainty that such was the purpose of the court, for the legal presumption is that the judge carefully expressed his deliberate intention therein.
4. DECREE—CONCLUSIVE IN SECOND SUIT OF ALL MATTERS LITIGABLE IN FORMER SUIT.—In a second proceeding between the same parties, or their privies, upon the same cause of action, not only every matter offered, but every admissible matter which might have been offered to sustain or defeat, in whole or in part, the cause of action, is rendered *res adjudicata* by the former decree upon the merits.

Statement.

This appeal challenges a decree of the Circuit Court which adjudged the Union Pacific Railroad Company and three of its officers guilty of contempt and fined them for a violation of the decree rendered and the writ of injunction issued in August, 1903, in the case of the Mason City and Fort Dodge Railroad Company against Union Pacific Railroad Company. The decree of 1903 adjudged that the Mason City Company and its lessee, the Chicago Great Western Railway Company, were "admitted into the full, equal and joint use of the main and passing tracks of the Union Pacific Railroad Company then located and established, or which might thereafter be located and established, from the eastern terminus of said tracks in Council Bluffs in the State of Iowa to a connection with the Union Stock Yards Railroad and other railroads connecting with the Union Pacific Railroad at South Omaha in the State of

Nebraska, including the bridge over which said tracks extend across the Missouri River between the cities of Council Bluffs, Iowa, and Omaha, Nebraska, * * * also the connections with the union stock yards in South Omaha and with the tracks of all other railway companies, which now or may be hereafter connected at or near South Omaha with the tracks of the Union Pacific Railroad Company hereinbefore described, each and all, to the same extent and upon the same terms and conditions stated in the contracts between the Union Pacific Railroad Company and the Chicago and North-western Railway Company, the Chicago, Milwaukee & St. Paul Railway Company and the Chicago, Rock Island & Pacific Railway Company" and it enjoined the Union Pacific Railroad Company, its officers and servants, "from interfering in any way with said full, equal and joint use of said property as aforesaid by the complainant, its successors, lessees and assigns, and the right to make said connections as aforesaid."

The western terminus of the Mason City Railroad is at Council Bluffs, but it has a freight yard and railroad tracks therein near Twentieth Street in Omaha and these tracks are connected with the main track of the Union Pacific Railroad which extends from Omaha to South Omaha. Southwest of this freight yard, between it and South Omaha adjoining the right of way of the Union Pacific Company, the Mason City Company has a large freight yard and many railroad tracks for the handling of grain. These tracks are connected with the main track of the Union Pacific Company which extends from Omaha to South Omaha and in this yard the Mason City Company has constructed a large grain elevator. This elevator has been constructed and the yard has been equipped and connected with Union Pacific tracks since the decree of 1903. For convenience it will be called the grain yard. The only method of communication by rail that the Mason City Company and its lessee have between their main line at Council Bluffs and this freight yard and this grain yard in Omaha and between those yards and the union stock yards, and the railroads from the west and south which connect with the Union Pacific tracks at South Omaha, is by way of the main track and the passing tracks of the Union Pacific Company. The Chicago, Rock Island & Pacific Railroad Company has a line of railroad from Chicago to Council Bluffs and from Denver to South Omaha, but it uses the main and passing tracks of the Union Pacific Company to conduct its trains from South Omaha to Council Bluffs, and *vice versa*. About a mile west of South Omaha the tracks of the Rock Island Company have a physical connection with the tracks of the Union Pacific Company.

The act which the court below held to be a violation of the decree and of the injunction was the prevention by the Union Pacific Company and its officers of the use by the Great Western Company, the lessee of the Mason City Company, of this connection for the purpose of drawing with one of its engines a carload of stucco, which was consigned to the Rock Island Company, from the Union Pacific tracks over this connection in order to deliver it to that company.

SANBORN, Circuit Judge, delivered the opinion of the court:

Counsel for the appellants base their contention that the court below was in error in its ruling in this case upon two propositions. They insist that the Great Western Company had no right under the decree of 1903 to deliver through cars or trains from its line at Council Bluffs to the Rock Island Company at South Omaha over the Pacific Company's connection with that company at that place. Their second proposition is that the Great Western Company had no right to transfer cars to the Rock Island Company with its own engines over this connection except for the purpose of completing the through passage of such cars from its line in Council Bluffs to the Rock Island Company at South Omaha, and this (1) because no such right was contemplated or secured by the decree, (2) because the use of the tracks and connections of the Union Pacific Company for such a purpose would cause great congestion of traffic on its tracks in Omaha and would disable it from fairly discharging its duty to the public, and (3) because the extent of the Great Western Company's rights are measured by those of the Rock Island Company and those of the contract tenants of the Pacific Company who had no such rights.

The argument of counsel in support of their first proposition is that Congress in the passage of the Acts of July 25, 1866, Chap. 246, 14 Stats. 244, and of February 24, 1871, Chap. 67, 16 Stats. 430, did not contemplate or intend to require the Pacific Company to permit the use of its tracks by other railroad companies to effect an actual interchange of cars and business between the latter and that the true meaning and effect of the decree of August, 1903, was not to permit the Mason City Company to use the connections of the Pacific Company's tracks with other railroads reaching them from the west, but merely to allow that company to make and use a physical connection of its tracks with those of the Union Pacific Company at Council Bluffs and to leave it and its lessee, the Great Western Company, without right to transfer its cars or trains over the connections of the Union Pacific tracks with other railroads. In support of these views they cite *Atchison, Topeka & Santa Fe R. Co. v. Denver & N. O. R. Co.*, 110 U. S. 667, in which the Supreme Court decided that the declaration of the Constitution of the State of Colorado that every railroad company should have the right with its road to intersect, connect with or cross any other railroad, meant that such company should have the right to make the appropriate physical connections of the railroads and not that it must stop its trains and exchange business with every road at every such connection on the same terms that it made with other roads at other connections. They also call attention to *Altoona & P. Connecting R. Co. v. Beech Creek R. Co.*, 35 Atl. 734, in which the Supreme Court of Pennsylvania held that under a statute which gave railroad companies the right to "connect their roads with roads of a similar character and authorized a jury to fix the terms of the connection in case the companies disagreed, the jurisdiction was limited to prescribing the place and manner of the connection and did not extend to the transfer of a part of one company's road

to another company, or to the management of its stations or of its land or water privileges." But these decisions are not persuasive because they do not treat of analogous cases. They construe a constitution and a statute which authorized the connection of railroad tracks of different companies while the acts of Congress here involved and the decree thereunder authorize the use of the railroad tracks of one company by other companies upon payment of reasonable compensation.

The duty of the Union Pacific Company to permit the use of its main and passing tracks between Council Bluffs and South Omaha by the Great Western Railway Company was imposed upon it by the Acts of 1866, 14 Stats. 244, and 1871, 16 Stats. 430, and the character and limits of that duty were fixed by the decree of 1903. The Pacific Company has claimed from the beginning, and still insists, that it was neither empowered nor required by those acts, or by any other law, to permit any other company to move with the engines of the latter any cars or traffic over any of its railroad tracks, and it has always insisted that the contracts it made to that effect with the Rock Island Company and the St. Paul Company in 1890 and with the Northwestern Company in 1898 were beyond its corporate powers. These claims have been litigated at various times between 1891 and the present day, but no court has ever sustained them. We cannot hope, and shall not endeavor, to review and analyze the Acts of 1866 and 1871 more perfectly or to portray more clearly their scope, object and legal effect than has been repeatedly done by the Supreme Court and by this court. *Union Pac. R. Co. v. Chicago etc. R. Co.*, 163 U. S. 564; 2 C. C. A. 174, 51 Fed. 309; *Union Pacific R. Co. v. Mason City & Fort Dodge R. Co.*, 199 U. S. 160; 64 C. C. A. 348, 128 Fed. 230. Suffice it to say that the public policy which inspired and the primary purpose of those acts were to bridge the gap in transportation by railroad between the western ends at Council Bluffs of railroads east of the Missouri River and the eastern ends at or near Omaha and South Omaha of railroads west of the Missouri River, that the method adopted to accomplish that purpose was to empower and require the Union Pacific Company to permit the use for reasonable compensation of their main and passing tracks across this gap by other railroad companies that owned railroads which extended to the gap for the purpose of drawing their trains and cars across it with their own engines, and this was the legal effect of that legislation.

When the Mason City Company, whose railroad extended from the east to Council Bluffs, applied for permission to use the tracks of the Union Pacific Company to haul its cars and trains from Council Bluffs to the railroads which terminated at South Omaha, the Pacific Company refused it, and after the Circuit Court entered the decree of 1903 that Company strenuously contended in this court and in the Supreme Court that no duty to allow the use of its bridge or any of its tracks by other companies to move traffic with their engines was imposed upon it by the Acts of Congress, and that if any such duty was created it did not require that Company to permit such use of its tracks between Omaha and South Omaha

southwest of Twentieth Street. This court and the Supreme Court held otherwise and affirmed the decree below. Did that decree empower the Mason City Company and its lessee, the Great Western Company, to haul a car or train consigned from its railroad east of Council Bluffs to the Rock Island Company west of South Omaha over the connection of the Union Pacific tracks with those of the Rock Island Company about a mile west of the stock yards at that place for the purpose of delivering that car or train to the latter company? The express adjudication of that decree is that the Mason City Company and its lessee are entitled to the full, equal and joint use of the main and passing tracks of the Union Pacific Company from their eastern terminus in Council Bluffs "to a connection with the Union Stock Yards Railway and the other railroads connecting with the Union Pacific Railroad at South Omaha, * * * also the connections with the union stock yards tracks in South Omaha and with the tracks of all other railroads which now or hereafter may be connected at or near South Omaha with the tracks of the Union Pacific Railroad Company" to the same extent stated in the contracts with the Rock Island Company, the St. Paul Company and the Northwestern Company. The contract with the Rock Island Company made in 1890, and the others are similar, granted to that Company the joint and equal use of the Pacific Company's main and passing tracks between the eastern terminus of such tracks in Council Bluffs and a line drawn at right angles across said tracks within one and one-half miles southerly of its passenger station in Omaha and the joint and equal use of its connections with the union stock yards tracks in South Omaha and conveniently located grounds in South Omaha on which the Rock Island Company might construct and maintain for its exclusive use tracks aggregating 3,000 feet in length. Now it is argued that while this decree and the contracts might have given other companies the right to draw their cars and trains destined to companies on the other side of the gap on to the tracks of the Pacific Company which spanned it, they gave no right to haul them off from those tracks over the connections of the tracks of the Pacific Company with the tracks of the companies to which the cars and trains were destined on the other side of the gap. But the main purpose of the Acts of Congress, of the contracts and of the decree was to bridge the gap, and this construction would defeat that purpose. It would stop the through transportation of other companies on the gap just as effectually as it was halted before upon the sides of it. This could not have been the intention of the Congress, or of the parties to the contracts, or of the Circuit Court which entered the decree. No discussion or argument could make more clear or certain than the terms of the contract and of the decree which have been cited the fact that their true meaning and effect were not thus limited. The contracts and the decree alike gave, upon the payment of fair compensation therefor, the joint and equal use with the Pacific Company of its connections of its main and passing tracks with the tracks of other companies at Council Bluffs, Omaha and South Omaha from or to which the bene-

ficiaries may desire to transfer trains or cars across the gap. The conclusion is that the Acts of 1866 and 1871 imposed upon the Pacific Company the duty to permit the use by a railroad company, whose tracks were connected with its tracks at Council Bluffs, Omaha or South Omaha, of the connections of its main and passing tracks between those cities with other railroads for the purpose of drawing from its own tracks and delivering over such connections with its own engines to such other railroads cars and trains destined across the river thereto, and the true meaning and legal effect of the decree of 1903 were that the Pacific Company owed that duty to the Mason City Company and its lessee, the Great Western Company, and that it should discharge it. The first proposition of counsel for the appellants cannot be sustained.

The second proposition is that the Mason City Company had no right to move cars with its own engines over the connection of the Union Pacific tracks with the tracks of the Rock Island Company at South Omaha or from or to its freight yard and grain yard in Omaha except to effect and complete a transfer of such cars across the gap between South Omaha and Council Bluffs, that it had no right to the use of this connection to exchange between other railroad companies cars which did not necessarily pass over the bridge in order to effect their trips. Upon its face the decree does not limit the use adjudged to the transfer of through cars or traffic. It grants a use joint and equal with that enjoyed by the Pacific Company itself and that Company undoubtedly had the right to use this connection to transfer cars to and from its yards that were not required to cross the river. It is argued that this apparent meaning of the words of the decree should be restricted by construction to the grant of a use for through traffic only because the primary purpose of the provisions of the Acts of 1866 and 1871 which required the Pacific Company to allow this use was to accommodate through traffic across the river only, because the decree granted the use to the same extent that the contract tenants had it and by the terms of their agreements, by custom and by their contemporaneous construction those tenants had it for through traffic only and because the use claimed would congest traffic and disable the Pacific Company from conducting its own business efficiently and from discharging its duty to the public.

It is true that the object of the requirement of the acts of Congress was to bridge the transportation gap and to facilitate the transfer of cars passing between railroads east and railroads west of the Missouri River, but this fact did not deprive the court, which was called upon to enforce this legislation, of its jurisdiction to prescribe the limits and the terms of the use which the Pacific Company should allow, nor of its power and duty to exercise a wide and wise judicial discretion in fixing those limits and terms. What those should be were questions necessarily involved in the suit which resulted in the decree of 1903. There was much more reason to contend that Congress did not intend to allow the use by other companies of the Pacific Company's tracks and connections south and west of Twentieth Street, a use in no way indispensable to the

transportation of cars across the river, than there is to argue that it did not purpose to permit the use of those tracks and connections by a company which already has the right to use them for through cars, to move cars to and from its yards in Omaha from and to other railroads with which those tracks connect. And yet the Supreme Court denied the former contention. The questions whether or not these acts of Congress authorize, and Congress intended, that the use now claimed should be permitted, was open to litigation and was necessarily decided in the original suit and it is too late for the parties to that litigation to debate that issue now, for in a second controversy between the same parties, or their privies, not only every matter offered but every matter which might have been offered to sustain or defeat, in whole or in part, the cause of action is rendered *res adjudicata* upon the merits by the former judgment. *Cromwell v. County of Sac*, 94 U. S. 351, 352; *Dickson v. Wilkinson*, 3 How. 57, 61; *Dimock v. Copper Co.*, 117 U. S. 559, 565; *Commissioners v. Platt*, 79 Fed. 567, 571, 572, 25 C. C. A. 87, 91, 92; *St. Louis, K. C. & C. R. Co. v. Wabash R. Co.*, 152 Fed. 849, 861, 81 C. C. A. 643, 655.

The decree by its terms adjudges to the Mason City Company and its lessee not the joint use of the Pacific Company's tracks and of its connection with the Rock Island Company in question for the transfer of through cars, but the unrestricted joint use thereof to the same extent that it was granted to the contract tenants. The agreements with those tenants have been searched in vain to find any such restriction. The contract with the Rock Island Company expressly grants to that corporation the joint and equal use with the Pacific Company of the latter's main and passing tracks from Council Bluffs to South Omaha, of its connection with its union depot tracks in Omaha and of its connections with the union stock yards tracks in South Omaha and by necessary implication of its connections at Council Bluffs with eastern railroads. This agreement was made in 1890. Before the Mason City Company built in Omaha, after the decree of 1903, its grain yard, the contract tenants owned no yards in that city wherein cars could be conveniently exchanged with other companies. Through cars were exchanged with companies other than the Pacific Company at the pool yard owned by the Pacific Company in Council Bluffs and at the union stock yards in South Omaha without the use of the engines of the Pacific Company. Local Omaha freight cars were handled by the Pacific Company's engines because they were generally obtained from or delivered to shippers on some of the spur or yard tracks of that Company and the contract tenants did not use their own engines for this purpose. Conceding that the custom had been that freight cars which did not cross the river should be exchanged between railroads in Omaha and that local Omaha freight cars should be handled in that city by the engines of the Pacific Company, that the understanding between the contract tenants and the Pacific Company had been that transportation of this nature should be moved by the engines of the Pacific Company and not by the power of the tenants and that the latter had never claimed the right to move it with their own engines over

the Pacific Company's tracks and connections to their own or other roads, these facts do not establish a controlling contemporaneous construction that they had no right to receive from and deliver to other companies over these tracks and connections of the Pacific Company with their own engines cars destined to and from their own yards in Omaha because they had no such yards and that question had never become an instant one. The evidence, therefore, fails to prove any custom regarding the question at issue or any contemporaneous construction of the contracts concerning it which ought to control their terms and there is nothing in their terms which limits the use they grant to the transference of through cars only, nothing to overrule the ordinary meaning of the words of the contracts and of the decree. We turn back accordingly to the decree to seek the real intention of its maker, the court, the object of all construction of writings.

It is to be interpreted in the light of the rules and principles of equity and of the opinions of the courts upon which it was based. It may be best construed by placing ourselves as nearly as possible in the position of the court which rendered it at the time it framed it. That court could not have been blind on the one hand to the fact that the Pacific Company was charged with the duty of transporting its own passengers and freight over its bridge and its tracks at Council Bluffs, Omaha and South Omaha, nor could the court have been blind on the other hand to the facts that every railroad company cannot have entrance to our great cities over tracks of its own, that the interest of the public, which in the end must pay for the use of railroads, and the interest of the railroad companies themselves, alike required that the transportation involved should be conducted with the least capital consistent with safe, prompt and efficient service and that, to the end that the multiplication of tracks and the increase of investments therein might be avoided, every railroad track in the three cities should be required to carry all the traffic that it could conveniently bear. *St. Louis, Kansas City & C. R. Co. v. Wabash Railroad Company*, 152 Fed. 849, 861, 862, 81 C. C. A. 643, 655, 656; *Union Pacific Railway Co. v. Chicago, R. I. & P. R. Co.*, 2 C. C. A. 174, 234, 51 Fed. 309, 369; *Central Trust Co. v. Wabash, St. L. & P. R. Co.*, 29 Fed. 558. In the light of these facts and rules of equity jurisprudence the court rendered the decree of 1903 which grants the joint and equal use of the tracks of the Pacific Company and of their connections with the tracks of other railroads at Council Bluffs and at or near South Omaha, without any limitation of that use to the transportation of through traffic across the Missouri River, and the logical and legal conclusion is that the court intended to adjudge and that the decree did adjudge to the Mason City Company and to its lessee the right to use those tracks and connections to draw with its own engines cars from and to its freight yard and grain yard in Omaha to and from other railroads thus connected with the tracks of the Union Pacific Company, although such movements were not made for the purpose of effecting or completing the transportation of such cars across the Missouri River.

The absence from a decree of any limitation or exception to general terms of known significance raises a persuasive legal presumption that the court intended to make none. And when the terms of a decree are plain and free from ambiguity their ordinary meaning and effect may not be lawfully extended or contracted by construction in the absence of proof to a reasonable certainty that such was the purpose of the court, for the legal presumption is that the judge carefully expressed his deliberate intention therein. *St. Louis, K. C. & C. R. Co. v. Wabash R. Co.*, 152 Fed. 849, 852, 81 C. C. A. 643, 646.

Finally counsel assert, and they have produced testimony to prove, that if the Mason City Company and its lessee, the Great Western Company, are permitted to make the use they here seek of the Pacific Company's tracks and connections with other railroads, those facilities will be so burdened that the latter company will be unable to conduct its own business conveniently and to discharge its duty to the public. If such will be the effect of this use it was no justification of the violation of the decree and of the injunction. It will be soon enough to consider the effect of this expected overburdening when it becomes an actuality. There was no substantial evidence that any such use had overburdened these tracks or connections when the decree was rendered or when the Pacific Company and its officers disobeyed it. There was no error in the proceedings in the court below and the decree it rendered is *affirmed*.

Filed December 1, 1908.

(Decree.)

And on the first day of December, A. D. 1908, in the record of the proceedings of said Circuit Court of Appeals is a decree in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, September Term, 1908.

TUESDAY, December 1, 1908.

No. 2564.

UNION PACIFIC RAILROAD COMPANY, A. L. MOHLER, J. M. HENRY,
and HENRY SWAGTEK, Appellants,

vs.

MASON CITY AND FORT DODGE RAILROAD COMPANY.

Appeal from the Circuit Court of the United States for the District
of Nebraska.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Nebraska, and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court, in this cause, be, and the same is hereby, affirmed with costs; and that the Mason City and Fort Dodge Railroad Company have and recover against the Union Pacific Railroad Company, A. L. Mohler, J. M. Henry and Henry Swagtek, the sum of twenty dollars for its costs herein and have execution therefor.

December 1, 1908.

(Petition for Appeal to Supreme Court U. S.)

And on the eleventh day of March, A. D. 1909, a petition for appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

No. 2564.

UNION PACIFIC RAILROAD COMPANY ET AL., Appellants,
vs.

MASON CITY AND FORT DODGE RAILROAD COMPANY, Appellee.

Petition for Appeal.

The above named appellants, Union Pacific Railroad Company, A. L. Mohler, J. M. Henry and Henry Swagtek, respectfully show that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Eighth Circuit, and that a judgment and decree therein has been rendered on the 1st day of December, 1908, affirming the decree of the Circuit Court of the United States for the District of Nebraska, rendered on the 21st day of December, 1906. That the matter in controversy in said suit, exclusive of interests and costs, exceeds the sum or value of one thousand dollars. That this cause is one in which the said United States Circuit Court of Appeals for the Eighth Circuit has rendered final decision. That this is not a case in which the original jurisdiction of said United States Circuit Court for the District of Nebraska was dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States, or citizens of different states, but that the jurisdiction of said court was originally invoked also because this was a case arising under the laws of the United States, under which complainant claimed rights and asked relief from said Circuit Court, based on said laws of the United States, and what it claimed to be the true construction and meaning thereof, while your petitioner resisted said claim and denied the construction placed thereon by complainant. That the laws in question were as follows: "An Act to aid in the Construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean, and to secure to

the Government the Use of the same for Postal, Military and other Purposes," and was passed by the Congress of the United States, and approved July 1st, 1862.

"An Act to amend an Act entitled 'An Act to aid in the Construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean, and to secure to the Government the Use of the same for Postal, Military and Other Purposes,' approved July 1st, eighteen hundred and sixty two," and was passed by the Congress of the United States, and approved July 2nd, 1864.

"An Act to Authorize the Construction of Certain Bridges, and to establish them as Post Roads," and was passed by the Congress of the United States, and approved July 25th, 1866.

"An Act to Authorize the Union Pacific Railroad Company to issue its bonds to Construct a Bridge Across the Missouri River, at Omaha, Nebraska, and Council Bluffs, Iowa," and was passed by the Congress of the United States, and approved February 24th, 1871.

That a federal question is involved in this case, and it is a case arising under the laws of the United States above referred to, and that it is a proper cause to be reviewed by the Supreme Court of the United States on appeal. .

Wherefore, the said appellants pray that an appeal be allowed them in the above entitled cause, directing the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the said appellants may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

N. H. LOOMIS,
EDSON RICH,
Attorneys for Appellants,
Union Pacific Railroad Company.
A. L. MOHLER,
J. M. HENRY, AND
HENRY SWAGTEK.

(Endorsed:) U. S. Ct. of Appeals. #2564. Union Pac. R. R. Co., *et al.*, vs. M. C. & Ft. D. R. R. Co. Petition for Appeal. Filed Mar. 11, 1909, John D. Jordan, Clerk.

(Assignment of Errors on Appeal to Supreme Court U. S.)

And on the eleventh day of March, A. D. 1909, an assignment of errors on appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

No. 2564.

UNION PACIFIC RAILROAD COMPANY ET AL., Appellants,
vs.
MASON CITY AND FORT DODGE RAILROAD COMPANY, Appellee.

Assignment of Errors.

And now on this 1st day of March, 1909, come the appellants Union Pacific Railroad Company, A. L. Mohler, J. M. Henry and Henry Swagtek, and they say that there is manifest error in the record, proceedings and decree in said cause, and that the decree rendered by this court on the 1st day of December, 1908, is erroneous and against the just rights of said appellants for the following reasons:

I. That the Court erred in affirming the judgment and decree of the court below.

II. That the court erred in not reversing the judgment and decree of the court below and remanding this cause with directions to dismiss the petition for order on defendants to show cause why they should not be punished for contempt, and with directions to discharge the defendants.

III. That it was against the just rights of the appellants and erroneous for the court to hold that under the terms of the decree originally entered in this cause, the complainant Mason City and Fort Dodge Railroad Company, has the right to run its engines, cars or trains, over and through the connection between the tracks of Union Pacific Railroad Company and the Chicago, Rock Island and Pacific Railroad Company at South Omaha, Nebraska.

IV. That it was against the just rights of the appellants and erroneous for the court to find and hold that Union Pacific Railroad Company, its agents and servants, were prohibited and enjoined by the original injunction and decree in this case, from interfering in any manner with the use by the complainant of the cross-over between the tracks of the defendant Union Pacific Railroad Company, and the tracks of the Chicago, Rock Island and Pacific Railway Company at South Omaha, Nebraska.

V. That it was against the just rights of the appellants and erroneous for the court to find and hold that Union Pacific Railroad Company, A. L. Mohler, General Manager of said Company, J. M. Henry, Yardmaster of said company, and Henry Swagtek, switch-tender of said company, were guilty of contempt in preventing said complainant from moving its engines, trains and cars from the tracks of Union Pacific Railroad Company to the tracks of Chicago, Rock Island and Pacific Railway Company, over the connection between the said tracks at South Omaha, Nebraska, and

in finding and holding that the said act was in violation of the order of injunction and decree originally entered in this case.

VI. That the court erred in affirming the judgment of the trial court that the said Union Pacific Railroad Company, A. L. Mohler, General Manager of said Company, J. M. Henry, Yardmaster of said company, and Henry Swagtek, switch-tender of said company, should jointly pay a fine of one hundred dollars and the costs of the proceedings in said case.

VII. That the court erred in not reversing the judgment and decree of the trial court and remanding the cause with directions to discharge the defendants under the showing made.

VIII. That the court erred in holding that under the terms of the original decree and injunction in this cause the said Mason City and Fort Dodge Railroad Company was entitled to the use of the tracks of the Union Pacific Railroad Company from their connection with the terminal tracks of the Mason City and Fort Dodge Company in the city of Omaha, to their connection with the track of the Chicago, Rock Island and Pacific Railroad Company at South Omaha, Nebraska, for the passage, thereover of cars, engines and trains of said Mason City and Fort Dodge Company, operated by its own employees, irrespective of whether such movement was necessary to complete or effect the through transportation of such cars, engines or trains over and across the bridge of Union Pacific Railroad Company across the Missouri river between Omaha, Nebraska, and Council Bluffs, Iowa. And the court erred in not reversing the decree of the court below for said reasons.

IX. The court erred in not finding and holding that under the terms of the original decree and injunction in this cause the said Mason City and Fort Dodge Railroad Company were permitted the use of the tracks and facilities of Union Pacific Railroad Company only in connection with and as a part of the through transportation of engines, cars and trains across the said bridge over the Missouri River, and as incident thereto, and not for the purpose of doing local switching between points on the same side of the river.

X. The court erred in not finding and holding that the Mason City and Fort Dodge Railroad Company had no right, under said original decree and injunction, to transfer cars with its own engines to the Rock Island tracks at the point in controversy, except in connection with and to complete the passage of such cars from complainant's lines in Council Bluffs directly across the Missouri River bridge to said Rock Island lines in South Omaha, and the court erred in not reversing the decree of the court below for said reasons.

XI. The court erred in not finding and holding that such a use of the tracks of the Union Pacific Company would result in a congestion of and interference with the traffic of said company and that the business of said company would be so seriously interfered with that it would be unable to properly carry out the duties owed by it to the public, and the court erred in not reversing the decree of the court below for that reason.

XII. That the court erred in not finding and holding that under the terms of the original decree and injunction herein, the Mason

City and Fort Dodge Railroad Company has no right, even on through shipments, to run its trains from its terminus at Council Bluffs over the Union Pacific bridge and lines to South Omaha, and thence on to the tracks of the Chicago, Rock Island and Pacific Railroad Company.

XIII. That the original decree and injunction in this cause merely granted to the Mason City and Fort Dodge Railroad Company the use of the tracks and passing tracks of the Union Pacific Railroad Company in Council Bluffs, Iowa, and Omaha, and South Omaha, Nebraska, as an incident to the use by said Mason City and Fort Dodge Company of the bridge of the Union Pacific Company across the Missouri river and the approaches thereto, and that it was not contemplated by the terms of said decree that said Mason City and Fort Dodge Company should have the use of said Union Pacific tracks except as connected with and as an incident to the passage of engines, cars and trains across said bridge. And the court erred in not so finding and holding and reversing the decree of the court below for these reasons.

Wherefore, appellants, Union Pacific Railroad Company, A. L. Mohler, J. M. Henry and Henry Swagtek, pray and ask a reversal of this cause, and that the decree of the United States Circuit Court of Appeals for the Eighth Circuit affirming the decree of the United States Circuit Court for the District of Nebraska be reversed, with directions that the Rule or Order to Show Cause why they should not be punished for Contempt be dismissed, and that the defendants be discharged.

UNION PACIFIC RAILROAD COMPANY,
A. L. MOHLER,
J. M. HENRY,
HENRY SWAGTEK,

Appellants,

By EDSON RICH, *Their Solicitor.*

N. H. LOOMIS,
Of Counsel.

(Endorsed:) U. S. Ct. of Appeals. #2564. Union Pac. R. R. Co., *et al.*, vs. M. C. & Ft. D. R. R. Co. Assignment of Errors. Filed Mar. 11, 1909, John D. Jordan, Clerk.

(Affidavit as to Amount in Controversy.)

And on the eleventh day of March, A. D. 1909, an affidavit as to the amount in controversy was filed in said cause, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

No. 2564.

UNION PACIFIC RAILROAD COMPANY ET AL., Appellants,
vs.
MASON CITY AND FORT DODGE RAILROAD COMPANY, Appellee.

Affidavit as to Amount in Controversy.

STATE OF NEBRASKA,
County of Douglas, ss:

I, Edson Rich, being first duly sworn, upon oath say that I am General Attorney for Union Pacific Railroad Company, Appellant in the above entitled action, and also attorney for the other appellants herein, A. L. Mohler, J. M. Henry and Henry Swagtek. That I have been connected with this cause ever since its inception, and have full knowledge of all facts connected with the same, and that I have had charge of this contempt proceeding for said appellants ever since the institution thereof. That the amount in controversy herein far exceeds the sum or value of one thousand dollars, exclusive of interest and costs. That this was an action instituted by Mason City and Fort Dodge Railroad Company to compel Union Pacific Railroad Company to grant to said Mason City and Fort Dodge Company the right to use jointly and fully with said Union Pacific Company the certain railroad bridge across the Missouri River between Council Bluffs, Iowa, and Omaha, Nebraska, and appurtenant tracks, belonging to Union Pacific Company; also the Union Pacific Company's depots in Council Bluffs and Omaha, and also its main and side tracks, switches and other terminal facilities extending from Council Bluffs, Iowa, to South Omaha, Nebraska. That said bridge, depots, tracks and terminal facilities were built and erected at a cost of thousands of dollars and are of the value of many thousands of dollars. That a fair and reasonable compensation for the use of said properties would amount to many thousands of dollars annually, and that said Mason City and Fort Dodge Company in its bill offered to pay Union Pacific Railroad Company compensation amounting to many thousands of dollars annually for the use of said properties. That said Mason City and Fort Dodge Company claimed that if it was denied the relief prayed for in its bill, it would be damaged irreparably, and that it would sustain damages in an amount very far in excess of one thousand dollars and in a sum amounting to many thousands of dollars. That said Mason City and Fort Dodge Railroad Company claimed that the right to use said properties was very valuable to it and worth an amount far in excess of one thousand dollars. That the matter of the right of appellee to use said properties was involved in this action, and appellee claimed such right as a perpetual one, and that in determining such right a controversy was involved in an amount far in excess of one thousand dollars, exclusive of interest and costs.

That the right for which said Mason City and Fort Dodge Railroad Company is now contending, and which it now claims as against the appellants, to-wit, the right to use the main and passing tracks of Union Pacific Railroad Company between Omaha and South Omaha for the passage thereover of engines, cars and trains of said Mason City and Fort Dodge Railroad Company from the freight grain and elevator yards of said last named company in the city of Omaha to the connection of the tracks of the Chicago, Rock Island and Pacific Railway Company with said Union Pacific tracks in South Omaha, is worth in value a sum far in excess of one thousand dollars and is worth many thousand dollars, and the sum or value in dispute in the present controversy exceeds one thousand dollars, exclusive of interest and costs.

EDSON RICH.

Subscribed in my presence and sworn to before me by the said Edson Rich, this 27 day of February, 1909.

[SEAL.]

H. E. KELLEY,

Notary Public in and for Douglas County, Nebraska.

(Endorsed:) U. S. Ct. of Appeals. # 2564. Union Pac. R. R. Co., *et al.*, vs. M. C. & F. D. R. R. Co. Affidavit as to amount in Controversy. Filed Mar. 11, 1909. John D. Jordan, Clerk.

(Bond on Appeal to Supreme Court U. S.)

And on the eleventh day of March, A. D. 1909, a bond on appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

No. 2564.

UNION PACIFIC RAILROAD COMPANY ET AL., Appellants,

vs.

MASON CITY AND FORT DODGE RAILROAD COMPANY, Appellee.

Bond on Appeal.

Know all men by these presents:

That we, Union Pacific Railroad Company, A. L. Mohler, J. M. Henry and Henry Swagtek, as principals, and Frank T. Hamilton of the County of Douglas, State of Nebraska, as surety, are held and firmly bound unto Mason City and Fort Dodge Railroad Company in the sum of five hundred dollars, to be paid to the said Mason City and Fort Dodge Railroad Company, its successors or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 1st day of March 1909.

Whereas the appellants, Union Pacific Railroad Company, A. L. Mohler, J. M. Henry and Henry Swagtek, in the above entitled suit, have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause in the Circuit Court of Appeals for the Eighth Circuit on the 1st day of December, 1908.

Now, Therefore, the condition of this obligation is such that if the said appellants shall prosecute said appeal to effect and answer all damages and costs if they fail to make said plea good; then this obligation shall be void; otherwise to remain in full force and virtue.

UNION PACIFIC RAILROAD
COMPANY,
A. L. MOHLER,
J. M. HENRY,
HENRY SWAGTEK,

Principals,

By EDSON RICH, *Their Attorney.*
FRANK T. HAMILTON, *Surety.*

STATE OF NEBRASKA,
Douglas County, ss:

Frank T. Hamilton, the surety named in the foregoing bond, being first duly sworn, on oath says:

That he is a resident and freeholder in Douglas County, State of Nebraska, and is worth the sum of one thousand dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.

FRANK T. HAMILTON.

Subscribed in my presence and sworn to before me this 1st day of March, 1909.

[SEAL.]

B. H. MEILE,
*Notary Public in and for the County
of Douglas, State of Nebraska.*

UNITED STATES OF AMERICA,
County of Douglas, State of Nebraska, ss:

I, George H. Thummel, Clerk of the United States Circuit Court of the District of Nebraska, hereby certify that the surety named in the foregoing bond is fully good for the amount for which he has qualified, and that if said bond were presented to me for approval, I would approve the same.

[SEAL.]

GEO. H. THUMMEL, *Clerk,*
By JOHN NICHOLSON,
*Deputy Clerk United States Circuit Court
for District of Nebraska.*

The foregoing bond is approved, this 11 day of March, 1909.

WALTER H. SANBORN,
United States Circuit Judge, Eighth Circuit.

(Endorsed:) U. S. Court of Appeals. #2564. Union Pac. R. R. Co., *et al.*, vs. M. C. & Ft. D. R. R. Co. Bond on Appeal to U. S. Supreme Court. Filed Mar. 11, 1909 John D. Jordan, Clerk.

(Order Allowing Appeal to Supreme Court U. S.)

And on the eleventh day of March, A. D. 1909, an order allowing an appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

No. 2564.

UNION PACIFIC RAILROAD COMPANY ET AL., Appellants,
vs.
MASON CITY AND FORT DODGE RAIL- COMPANY, Appellee.

Order Allowing Appeal.

It is hereby ordered that the appeal in the above entitled case to the Supreme Court of the United States be and is hereby allowed as prayed.

WALTER H. SANBORN,
United States Circuit Judge, Eighth Circuit.

(Endorsed:) U. S. Court of Appeals. #2564. Union Pac. R. R. Co., *et al.*, vs. M. C. & Ft. D. R. R. Co. Order allowing Appeal. Filed Mar. 11, 1909. John D. Jordan, Clerk.

(Citation on Appeal to Supreme Court U. S.)

And on the seventeenth day of March, A. D. 1909, a citation on appeal to the Supreme Court of the United States was filed in said cause, the original of which with the acceptance of service by counsel for appellee endorsed thereon, is hereto attached and herewith returned:

1. The first part of the book

is devoted to the history of the

country from the earliest times

to the present day.

The second part of the book

is devoted to the history of the

people of the country.

The third part of the book

is devoted to the history of the

government of the country.

The fourth part of the book

is devoted to the history of the

religion of the country.

The fifth part of the book

is devoted to the history of the

literature of the country.

The sixth part of the book

is devoted to the history of the

arts and sciences of the country.

The seventh part of the book

is devoted to the history of the

commerce of the country.

The eighth part of the book

is devoted to the history of the

navigation of the country.

The ninth part of the book

is devoted to the history of the

army of the country.

The tenth part of the book

is devoted to the history of the

navy of the country.

The eleventh part of the book

is devoted to the history of the

public administration of the country.

The twelfth part of the book

is devoted to the history of the

public finance of the country.

The thirteenth part of the book

is devoted to the history of the

public health of the country.

EXHIBIT 14.

765

Statement of Trains crossing No. River Bridge during May 1906.

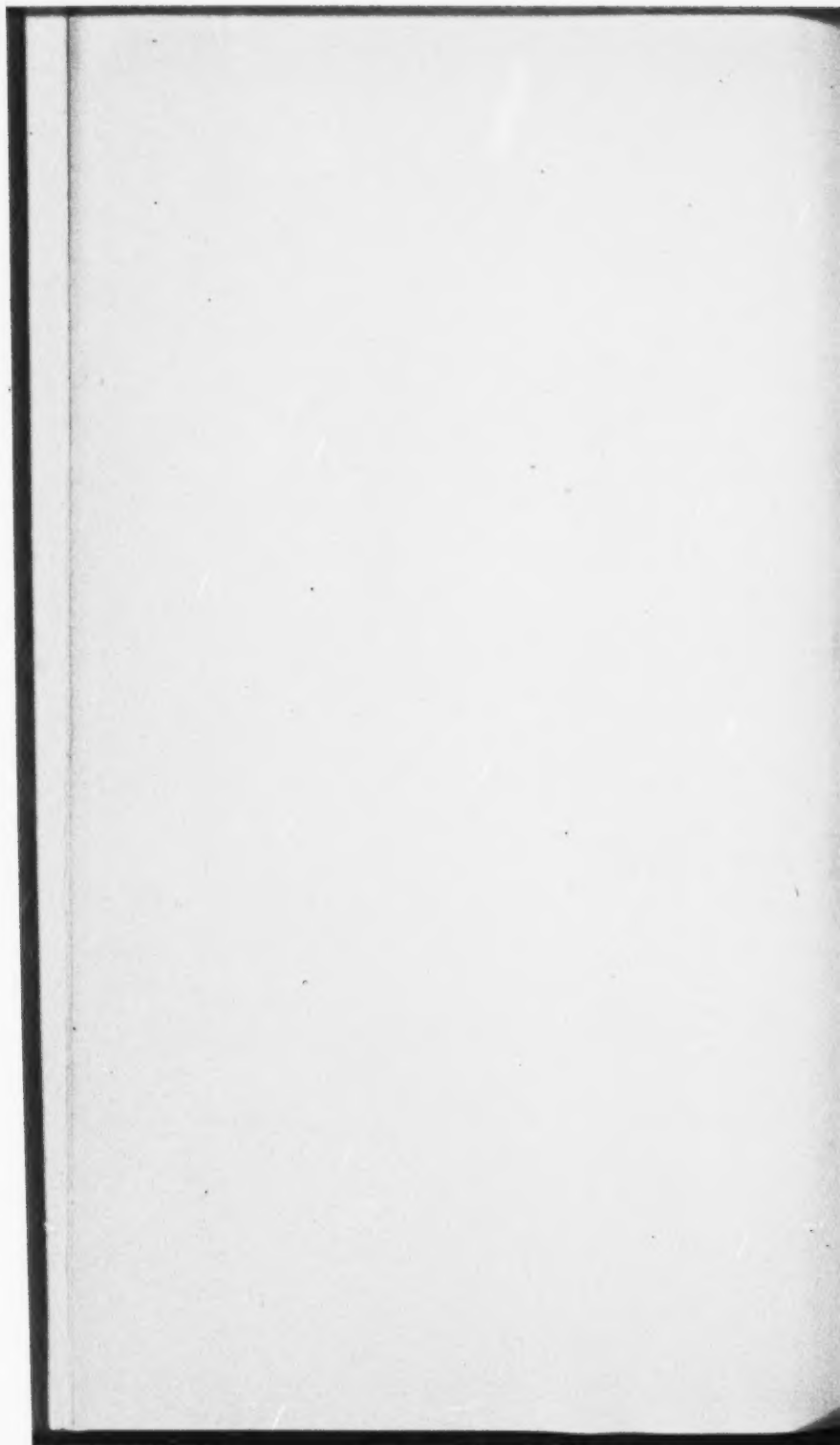
Roads.	East Bound.		West Bound.		Total Trains.
	Freight	Passenger	Freight	Passenger	
C. M. & St. P.	150	242	150	241	783
C. & N. W.	187	803	169	789	1948
C. G. W.	105	270	107	249	711
C. B. & O.	0	35	0	58	93
K. C. St. J. and C. B.	0	93	0	93	186
Wabash	0	64	0	64	128
C. R. I. & P.	221	291	221	286	1019
Union Pacific	951	233	956	235	2375
Totals	1614	2001	1613	2015	7243

31 Days		Ave. per Day	
Total Eastbound	3626		117
Total Westbound	3618		117
All Trains	7243		234

ENDORSED: Filed Jan 24 1907

GEO. H. THUMMEL, Clerk.

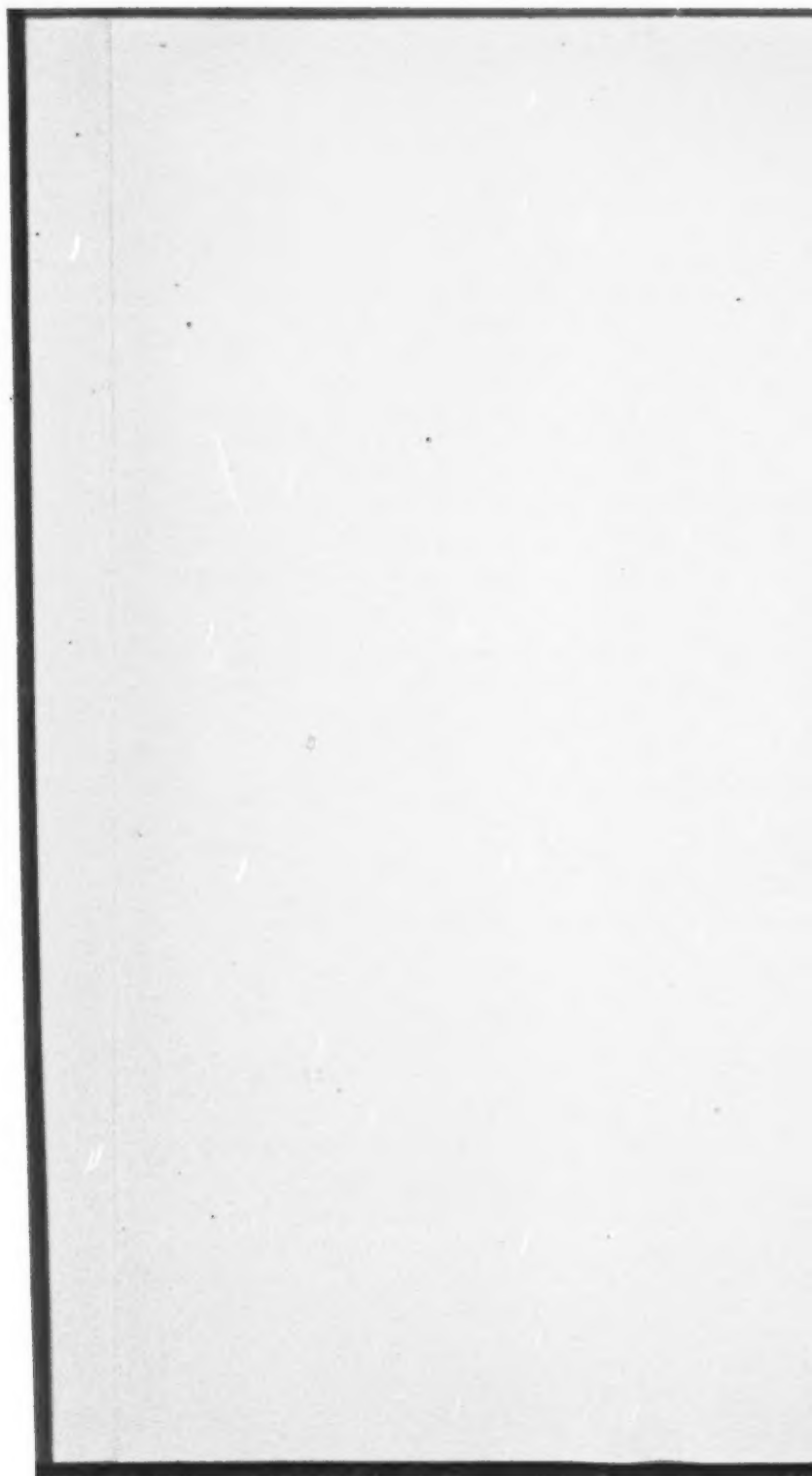
MAY	C. M. & ST. P.				C. & N. W.				C. G. W.				C. R. I. & P.				WABASH		L. C. ST. J. & C. R.		C. B. & O.		UNION PACIFIC.					
	EASTBOUND		WESTBOUND		EASTBOUND		WESTBOUND		EASTBOUND		WESTBOUND		EASTBOUND		WESTBOUND		EAST	WEST	EAST	WEST	EAST	WEST	EASTBOUND			WESTBOUND		
	Frgt	Pass	Frgt	Pass	Frgt	Pass	Frgt	Pass	Frgt	Pass	Frgt	Pass	Frgt	Pass	Frgt	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Lgt	Frgt	Pass	Lgt	Frgt	Pass
1	5	6	5	9	6	29	5	29	5	9	6	7	4	9	6	11	2	2	3	3	2	1	18	9	7	22	8	8
2	4	9	4	8	7	29	4	24	3	9	3	8	8	12	7	10	2	2	3	3	1	3	18	9	9	18	12	9
3	4	10	5	8	7	25	7	26	4	8	5	8	9	10	6	9	2	2	3	3	2	1	21	13	10	21	9	8
4	5	9	5	9	4	25	6	28	3	8	3	8	5	9	8	9	2	2	3	3	1	2	17	10	6	23	11	6
5	5	8	5	9	8	25	7	25	4	8	4	8	10	8	7	10	2	2	3	3	1	2	25	16	6	17	15	7
6	5	7	3	6	3	28	3	23	1	8	1	8	4	9	5	9	2	2	3	3	2	1	22	9	8	19	10	7
7	5	8	5	8	6	27	6	25	4	8	4	8	8	9	10	5	2	2	3	3	1	2	20	10	7	16	11	8
8	5	6	5	8	6	25	5	27	4	7	4	8	9	10	5	10	4	4	3	3	1	2	21	8	7	18	10	8
9	4	9	5	8	6	29	6	23	4	9	4	8	5	9	8	9	2	2	3	3	1	2	22	9	8	22	11	9
10	5	9	3	7	9	26	8	23	4	8	4	8	8	11	7	9	2	2	3	3	1	2	21	10	9	17	12	9
11	6	9	6	7	6	25	6	26	3	8	3	8	8	9	6	9	2	2	3	3	1	2	20	12	6	18	15	7
12	6	8	6	9	6	26	6	27	3	8	3	8	9	8	8	9	2	2	3	3	1	2	22	13	8	18	13	7
13	4	7	3	6	3	23	2	25	1	8	1	8	5	8	6	7	2	2	3	3	1	2	19	10	7	15	9	6
14	5	8	5	8	9	29	10	25	4	8	4	8	5	9	8	9	2	2	3	3	1	2	22	14	7	22	16	9
15	5	8	5	8	7	27	8	27	4	7	4	8	7	9	8	9	2	2	3	3	1	2	18	12	8	20	11	7
16	4	8	4	8	9	26	6	26	3	7	3	8	8	8	8	10	2	2	3	3	1	2	15	13	8	14	14	9
17	8	7	6	8	5	27	5	24	4	8	5	8	8	8	6	10	2	2	3	3	1	2	13	13	8	16	14	7
18	5	8	5	8	6	26	4	24	4	8	4	7	8	9	9	10	2	2	3	3	1	2	20	11	6	17	11	8
19	5	7	6	7	7	25	7	23	4	8	4	8	9	8	7	9	2	2	3	3	1	2	18	18	8	21	15	7
20	2	7	2	6	4	26	5	23	1	8	1	8	3	9	3	7	2	2	3	3	1	2	23	9	6	16	11	6
21	4	7	6	8	6	25	5	27	3	9	3	7	3	8	9	10	2	2	3	3	1	2	15	15	8	23	19	8
22	6	8	6	8	6	27	4	26	4	8	4	8	8	9	7	8	2	2	3	3	1	2	16	4	9	18	9	8
23	4	8	4	8	5	24	5	27	4	6	4	9	7	9	7	11	2	2	3	3	1	2	23	14	8	15	18	8
24	5	8	5	8	6	27	4	26	4	8	4	8	9	9	7	8	2	2	3	3	1	2	18	17	8	24	13	8
25	7	7	7	8	5	24	5	25	3	10	3	10	8	9	8	9	2	2	3	3	1	2	18	12	7	13	16	7
26	4	9	4	7	7	25	7	25	4	8	4	8	10	10	8	8	2	2	3	3	1	2	16	17	9	20	14	8
27	3	7	3	6	5	23	6	26	1	8	1	8	3	9	4	9	2	2	3	3	2	1	19	7	6	13	12	6
28	5	8	5	8	6	26	9	26	3	8	3	8	7	9	9	8	2	2	3	3	1	2	20	11	7	18	14	7
29	7	6	7	7	6	23	5	27	5	9	4	9	11	9	7	9	2	2	3	3	1	2	20	6	7	16	12	7
30	4	8	5	10	6	26	6	26	3	8	3	8	8	10	7	11	2	2	3	3	0	2	18	15	8	17	16	9
31	4	8	5	8	5	25	7	25	4	8	4	8	7	9	10	10	2	2	3	3	2	1	14	13	7	16	12	7
	150	242	150	241	187	803	179	789	105	250	107	249	221	281	221	286	64	64	93	93	35	58	592	359	233	563	393	235



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Exhibit 15.

No. 1. From Train Sheet			From Train Sheets		From Train Sheet.	
Bet. Co. B. Jct. & Omaha			Between 11th St. Omaha & Summit		Bet. Summit and Gilmore.	
Date 1906	East	West	East	West	East	West
June 11	71	78	216	219	76	82
— 12	80	80	248	237	83	76
— 13	73	71	227	213	73	75
— 14	85	73	239	242	86	89
— 15	70	74	206	203	69	77
— 16	73	70	213	202	69	67
— 17	52	56	188	173	45	44
504		502	1537	1489		
17th a Sunday. Above does not include back-overs, nor light engine movement across bridge between Omaha and Co. Bluffs.				Exhibit 15 #1.		



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No. 2 Bet. Co. B. & Omaha. Reg. Scheduled Daily Trains.			Bet. Co. B. & Omaha. Passgr Trains. Back-Overs.		Bet. 11th St. Omaha & Summit. Reg. Scheduled Daily Trains.		Between Summit & Gilmore. Reg. Scheduled Daily Trains.	
Date 1906	st	West	East	West	East	West	East	West
June 11	3	38	24	25	30	33	23	28
" 12	3	38	24	25	30	33	23	28
" 13	43	38	24	25	30	33	23	28
" 14	43	38	24	25	30	33	23	28
" 15	43	38	24	25	30	33	23	28
" 16	43	38	24	25	30	33	23	28
" 17	44	32	24	22	25	28	17	21
292		260	168	172				
17th a Sunday							Endorsed: Filed Jan 24-1907 GEO. H. THUMMEL, Clerk. Exhibit 15 # 2.	

Statement No. 1

Form 1242.

Copy

768

UNION PACIFIC RAILROAD CO.

Wheelage of CRS & P & CM & St P C & NW-CGW & UP Trains

Exhibit 23

Between 'A' and 'C' during May 1906

W. C. Bartlett

Supt. Transportation.

Auditor of Equipment Service.

BETWEEN	No. Engines	No. Bag. Mail and Exp. Cars	No. Coaches and Chair Cars	No. Sleepers and Diners	No. Freight & Caboose Cars	Distance	MILEAGE	Wheels	WHEELAGE
Chicago Rock	Island 237 320 326 139	& Pacific 290 674	Ry. 1085 272	 559	 7016	1501 ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓	356 480 480 209 435 1012 1629 408 839 10531	14 16 18 20 8 12 8 12 12 8	4984 7680 8802 4180 3480 12144 13032 4896 10068 84248
Total	1022	964	1357	559	7016		16388		153514
Chicago, Mil	waukee 36 104 357	& St. Pa 13 739	ul Ry. 194 646	 629	 4586	1501 ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓	54 156 986 20 1109 291 970 944 6884	8 16 18 8 12 8 12 12 8	432 2496 17748 160 13308 2328 11640 13328 55072
Total	799	752	840	629	4586		11414		114512
Chicago	& North 79 766 1116 8	Western 547 1583	Ry. 1191 1838	 1136	 3962	1501 ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓	119 1150 1675 12 821 2376 1788 2759 1705 5947	14 16 18 20 8 12 8 12 12 8	1666 18400 30150 240 6568 28512 14304 33108 20460 47576
Total	1969	2130	3029	1136	3962		18352		200984
Chicago G	reat We 515 200	stern Ry. 246	 317 459	 2 623	 3063	1501 ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓	773 300 369 476 689 3 935 4598	16 18 8 8 12 8 12 8	12368 5400 2952 3808 8268 24 11220 36784
Total	715	246	776	625	3063		8143		80824

UNION PACIFIC RAILROAD CO.

Wheelage of _____ Trains

Between _____ *and* _____ *during* _____ 190

W. C. Bartlett

Supt. Transportation.

Auditor of Equipment Service.

BETWEEN	No. Engines	No. Bag. Mail and Exp. Cars	No. Coaches and Chair Cars	No. Sleepers and Diners	No. Freight & Caboose Cars	Distance	MILEAGE	Wheels	WHEELAGE
Union Pacific Railroad (Pass.)	101 117 94 158	291 569	268 336	18 411		1501 ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓	152 176 141 237 437 854 402 504 27 617	14 16 18 20 8 12 8 12 8 12	2128 2816 2538 4740 3496 10248 3216 6048 216 7404
Total	470	860	604	429			3547		42850
Union Pacific Railroad (Frt.)	580 165 969 59				15626	1463 ✓ ✓ ✓ ✓	849 241 1418 86 22861	14 16 18 20 8	11886 3856 25524 1720 182888
Total	1773				15626		25455		225874
Chicago Burlington & Quincy R. y.	14 79	12 88	88 186	126		1501 ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓	21 119 18 132 132 279 189	16 18 8 12 8 12 12	336 2142 144 1584 1056 3348 2268
Total	93	100	274	126			890		10878
K. C. C. B.	184 2	1 343	267 123	263		✓ ✓ ✓ ✓ ✓ ✓ ✓	276 3 18 2 515 401 185 395	16 18 8 12 8 12 12	4416 54 16 6180 3208 2220 4740
Total	279	444	664	389			1777		20834

Statement No. 1 Cont'd.

Form 1242.

UNION PACIFIC RAILROAD CO.

Wheelage of _____ Trains

Between _____ and _____ during _____ 190 _____

W. C. Bartlett
Supt. Transportation.
Auditor of Equipment Service.

BETWEEN	No. Engines	No. Bag. Mail and Exp. Cars	No. Coaches and Chair Cars	No. Sleepers and Diners	No. Freight & Caboose Cars	Distance	MILAGE	Wheels	WHEELAGE
	Wabash 2 86 40	Railroad 4 122	 122 141	 124		1501 ✓ ✓ ✓ ✓ ✓ ✓ ✓	3 129 60 6 183 183 212 186	14 16 18 8 12 8 12 12	42 2064 1080 48 2196 1464 2544 2232
Total	128	126	263	124			962		11670
Recapitulation	103 401 215 158	308 1122	745 786	18 924		1501 ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓	155 602 323 237 462 1684 1118 1180 27 1387	14 16 18 20 8 12 8 12 8 12	2170 9630 5814 4740 3696 20208 8944 14160 216 16644
Total	877	1430	1531	942			7175		86224

Endorsed: Filed Jan. 24, 1907.
GEO. H. THUMMEL, Clerk.

UNION PACIFIC RAILROAD COMPANY.

PER DIEM RECLAIM STATEMENT. by Union Pacific Railroad Company

Statement of Cars Switched, ^A for C. & G. W. ^R Y

at Omaha Station, Month of August 190 5

Arbitrary Time Allowance _____ Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard
1	1	Mo. P.	27759	Mo. Pac.		49	10	C. G. W.	12196	B. & M. R.	
2		—	28398	—		50		—	10810	—	
3		—	31151	—		51		—	14400	—	
4		—	15684	—		52		—			
5		—	30261	—		53		—			
6						54	11	C. G. W.	13766	Mo. P.	
7						55		—	13196	—	
8	2	Mo. P.	25500	Mo. Pac.		56		—	9150	—	
9		—	27919	—		57		—	16082	Mo. Pac.	
10		—	25433	—		58		—	13756	—	
11						59		—	12742	—	
12						60		—	14650	—	
13	4	C. G. W.	1106	Mo. P.		61		Mo. P.	16904	—	
14		—	1768	—		62		—	22500	—	
15		C. St. P. K. C.	2826	—		63		—	28909	—	
16		C. G. W.	17388	—		64		—	26127	—	
17		—	17740	—		65		I. M. & S.	19723	—	
18		—	17204	—		66		D. S. & N.	4865	—	
19		—	7146	—		67		C. G. W.	15774	—	
20		—	14320	—		68		—	16070	—	
21		—	14462	—		69		—			
22		—	7250	—		70		—			
23		—	1134	—		71	12	C. G. W.	17128	Mo. Pac.	
24		C. St. P. K. C.	11360	—		72		—			
25		C. G. W.	9266	—		73		—			
26		—	14904	—		74	14	C. G. W.	16624	B. & M. R.	
27		—	636	—		75		—	13298	—	
28		—	9424	—		76		—	14584	—	
29		C. St. P. K. C.	10062	—		77		—			
30		—	8126	—		78		—			
31		G. N.	12204	—		79	15	C. G. W.	1940	M. & O.	
32		C. G. W.	14778	—		80		Mo. P.	19986	Mo. Pac.	
33		—	12624	—		81		—			
34		C. B. & Q.	19768	—		82		—			
35						83	16	C. G. W.	14212	B. & M. R.	
36						84		—			
37	5	Mo. P.	15301	Mo. Pac.		85		—			
38		C. B. & Q.	24988	B. & M. R.		86	17	C. St. P. K. C.	11842	Mo. Pac.	
39		—	32526	—		87		—	11758	—	
40						88		C. G. W.	150	—	
41						89		—	2600	—	
42	7	G. B. W.	1928	B. & M. R.		90		C. St. P. K. C.	9460	—	
43		—		—		91		—	11264	—	
44						92		C. G. W.	2558	—	
45	8	C. B. & Q.	27959	B. & M. R.		93		C. St. P. K. C.	9824	—	
46		I. M. & S.	14012	Mo. Pac.		94		C. G. W.	60010	—	
47						95		—	68	—	
48						96		—	1274	—	
TOTAL											

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE

NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory.

In order to follow out this rule, all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

466

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched By Union Pacific Railroad Company for C G W Ry

772

at Omaha Station, Month of August 1905

Arbitrary Time Allowance _____ Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
1	17	C.G.W.	1526	Mo. Pac.		49		MOP	19057	Mo. Pac.	
2		—	9946	—		50					
3		C.St.P.K.C.	8776	—		51					
4		—	9510	—		52	22	G.B.&W.	1928	MOP	
5		C.G.W.	7174	—		53		L.S.&M.S.	27231	—	
6		—	872	—		54		C.G.W.	15272	—	
7		—	1618	—		55		—	12676	B.&M.R.	
8						56		Gt	8467	—	
9						57		C.G.W.	19436	—	
10	18	N.Y.C.H.R.	59082	B.&M.R.		58		P.R.R.	70197	Mo. Pac.	
11		G.N.	72250	—		59		C.G.W.	11864	—	
12		C.B.&Q.	30381	—		60		C.H.&D.	45511	—	
13		M.C.	46870	—		61		C.G.W.	7214	—	
14		L.S.&M.S.	46208	—		62		N.Y.C.H.R.	95113	—	
15		U.L.	11444	—		63		—	59167	—	
16		P.M.	43081	—		64					
17		N.Y.C.H.R.	63037	—		65					
18		L.V.	71059	—		66	23	C.G.W.	11708	MOP	
19		P.R.R.	14039	—		67		C.St.P.K.C.	10328	—	
20	19	N.Y.C.H.R.	52107	B.&M.R.		68		MOP	20449	—	
21		—	59167	—		69		C.G.W.	778	—	
22						70		—	12520	—	
23						71		—	3254	—	
24						72		—	8586	—	
25						73		—	7400	—	
26	20	C.G.W.	50332	MOP		74		—	11410	—	
27		—	16630	—		75		—	7332	—	
28		—	13946	—		76		—	12888	—	
29		—	15290	—		77		—	16584	B.&M.R.	
30		—	12920	—		78		—	1620	MOP	
31		I.M.&S.	14255	—		79		C.St.P.K.C.	10750	—	
32		C.G.W.	13240	—		80		—	11126	—	
33		—	16474	—		81		C.G.W.	8096	—	
34		C.St.P.K.C.	11376	—		82		—	12108	B.&M.R.	
35		C.G.W.	14446	—		83		—	15890	—	
36		—	12076	—		84		—	1202	MOP	
37		B.&O.	92906	—		85		B.&O.	165286	—	
38		C.G.W.	13420	—		86					
39		C.St.P.K.C.	10258	—		87					
40		—	11448	—		88	24	P.B.&W.	1004	MO. Pac.	
41		C.G.W.	14466	—		89		I.M.&S.	9282	—	
42		L.S.&M.S.	43468	B.&M.R.		90		—	12282	—	
43						91					
44	21	D.S.	8098	B.&M.R.		92					
45		C.G.W.	17636	MOP		93	25	C.G.W.	16710	MOP	
46		—	14862	B.&M.R.		94					
47		—	12510	MOP		95					
48						96					
TOTAL											

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory.

In order to follow out this rule, all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched By Union Pacific Railroad Company for C G W. R

773

at Omaha Station, Month of August 190 5

Arbitrary Time Allowance

Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
1	26	C.St.P.K.C.	9024	MOP.		49	30	C & N.W.	44068	MOP.	
2		—	9234	—		50		MOP.	17067	—	
3		—	2786	—		51		—	30131	—	
4		—	9568	—		52					
5		—	1458	—		53					
6		C.G.W.	7288	—		54	31	C & N.W.	10106	D & M.R.	
7		C.St.P.K.C.	8624	—		55		C.G.W.	30123	MOP.	
8		—	8972	—		56		—	12202	—	
9		—	2326	—		57		—	14816	—	
10		—	11756	—		58		—	13920	—	
11		—	11842	—		59		—	14264	—	
12		C.G.W.	364	—		60		—	15142	—	
13		—	8540	—		61		—	12418	—	
14		—	8748	—		62		—	13012	—	
15		—	9008	—		63		—	1786	—	
16		—	2690	—		64		—	8778	—	
17		MOP.	31233	—		65					
18		C.G.W.	10830	—		66					
19		—	1696	—		67					
20		—	11910	—		68					
21		—	10046	—		69					
22		—	1184	—		70					
23		—	7370	—		71					
24		—	536	—		72					
25		—	3342	—		73					
26		—	150	—		74					
27						75					
28						76					
29	28	C.St.P.K.C.	9740	MOP.		77					
30		—	9704	—		78					
31		—	2978	—		79					
32		C.G.W.	8958	—		80					
33		—	2008	—		81					
34		—	2386	—		82					
35		MOP.	19986	—		83					
36		Erie.	84751	—		84					
37		C.St.P.K.C.	8926	—		85					
38		C.G.W.	3406	—		86					
39		—	3020	—		87					
40		—	1626	—		88					
41		C.St.P.K.C.	9962	—		89					
42		C.G.W.	11708	—		90					
43		P.C.C.St.L.	2538	—		91					
44						92					
45						93					
46	29	MOP.	31233	MOP.		94					
47		B. & O.	78571	O.B.T.		95					
48						96					
TOTAL											

Correct: Endorsed: Filed Jan 24 1907 Correct:

Geo. H. Thummel, Clerk.

Agent

R

Agent

R

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS.

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

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This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

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This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched By Union Pacific Railroad Company for C G W Ry775 at Omaha Station, Month of September 1905

Arbitrary Time Allowance _____ Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
1	18	C.G.W.	16370	MOP		49		M.C.	45387	MOP	
2		—	30304	—		50		C.G.W.	13406	B. & M.R.	
3		—	13190	—		51		—	16594	—	
4						52		G.N.	14372	—	
5						53		C.G.W.	30316	MOP	
6		C.G.W.	13638	B. & M.R.		54		—	15396	—	
7		—	2210	MOP		55		—	14048	—	
8		—	15224	—		56		—	12462	—	
9		—	15704	B. & M.R.		57		C.St.P.K.C.	2874	—	
10		N.Y.C.St.L.	15761	MOP		58		C.G.W.	8950	—	
11		I.I. & I.	4015	—		59		—	2024	—	
12		Ill.Cent.	7566	MOP		60		—			
13		C.I. & L.	17589	—		61		—			
14		L.V.	71138	—		62	20	Van.Line	10174	B. & M.R.	
15		C.G.W.	16382	—		63		R.Gw.	1794	—	
16		—	16954	—		64		M. & O.	12288	—	
17						65		P.R.R.	360008	—	
18						66		C.G.W.	7332	—	
19	20	C.M. & St.P.	68914	B. & M.R.		67		—	12042	—	
20						68					
21						69					
22	21	C.G.W.	30325	MOP		70	30	C.G.W.	13058	B. & M.R.	
23		—	30190	B. & M.R.		71		C.B. & Q.	74559	—	
24		—	5439	—		72		Ia.Cent.	04606	MOP	
25		—	13604	MOP		73		C.G.W.	18082	—	
26		—	17422	—		74		—	8150	—	
27						75		C.St.P.K.C.	9498	—	
28						76					
29	23	C.G.W.	15548	B. & M.R.		77					
30		C.B. & Q.	31545	—		78					
31						79					
32						80					
33	24	C.St.P.K.C.	9556	MOP		81					
34		C.G.W.	17934	—		82					
35		Wab.	66866	—		83					
36		C.G.W.	17184	—		84					
37						85					
38						86					
39	25	C.C.C. & St.L.	8265	B. & M.R.		87					
40		C.G.W.	15876	—		88					
41		—	16574	—		89					
42						90					
43						91					
44	27	C.G.W.	13390	B. & M.R.		92					
45						93					
46						94					
47	28	C.G.W.	46162	B. & M.R.		95					
48		MOP	42279	MOP		96					
TOTAL											

Correct: Endorsed: Filed Jan 24 1907 Correct:

Geo. H. Thummel, Clerk.

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

In order to follow out this rule, all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

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Exhibit 26 **UNION PACIFIC RAILROAD COMPANY.**

Inter.

PER DIEM RECLAIM STATEMENT.Statement of Cars Switched By Union Pacific Railroad Company for C G W Ry776 at Omaha Station, Month of October 190 5

Arbitrary Time Allowance

Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
1	1	C.G.W.	13364	B. & M.R.		49					
2						50	11	L V.	44419	B. & M.R.	
3						51					
4	2	C.G.W.	12230	B. & M.R.		52					
5		N.Y.C.H.R.	61121	—		53	12	N.Y.C.H.R.	63589	B. & M.R.	
6		MOP	16406	—		54		S.I.	1400	—	
7		C.G.W.	2352	M. & O.		55					
8		—	13390	B. & M.R.		56					
9						57	13	C.G.W.	16710	B. & M.R.	
10						58		—	7186	—	
11	3	C.G.W.	1376	B. & M.R.		59		—	8996	—	
12						60		—	42052	—	
13						61			15950		
14	4	C.G.W.	15302	B. & M.R.		62					
15		—	46278	—		63					
16		M.K.T.	10320	—		64	14	C.G.W.	12462	M. & O.	
17						65		Gt.	23777	B. & M.R.	
18						66		N.D.L.	2920	—	
19	5	C.St.P.K.C.	11618	B. & M.R.		67		P.F.W. & C.	15105	—	
20		C.G.W.	17670	—		68		C.St.P.K.C.	11140	—	
21						69					
22						70					
23	6	C.G.W.	14812	B. & M.R.		71	15	Ill. Cent.	35900	B. & M.R.	
24		—	2574	—		72					
25						73					
26						74	16	S.F.P. & P.	788	B. & M.R.	
27	7	C.G.W.	1996	B. & M.R.		75		C.St.P.K.C.	8656	—	
28		P.M.	42504	—		76		L.S. & M.S.	24443	MOP	
29		S.I.	1747	—		77		C.G.W.	7332	B. & M.R.	
30		—	1435	—		78		—	12128	—	
31		C.G.W.	13386	—		79					
32		C.St.P.K.C.	8224	—		80					
33						81	17	C.G.W.	16710	B. & M.R.	
34						82		C. & S.	27530	—	
35	8	C. & N.W.	5500	R.I.		83		C.G.W.	14442	—	
36		C.M. & St.P.	29011	—		84					
37		C.C.C. & St.L.	21577	—		85					
38						86	18	C.G.W.	60066	B. & M.R.	
39						87		L.V.	61512	—	
40	9	C.M. & St.P.	73690	B. & M.R.		88		C. & N.W.	61178	M. & O.	
41		C.G.W.	16080	—		89		C.B. & Q.	27855	B. & M.R.R.	
42						90					
43						91					
44	10	C.G.W.	13386	B. & M.R.		92	19	C.G.W.	12878	B. & M.R.	
45		C.St.P.K.C.	8224	—		93		—	11798	—	
46		C.G.W.	18006	—		94					
47		S.P.	80628	—		95	20	B. & O.	71166	M. & O.	
48						96					
TOTAL											

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE

NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

In order to follow out this rule all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

PER DIEM RECLAIM STATEMENT.

Inter
Statement of Cars Switched by Union Pacific Railroad Company for CGW R. y

Statement of Cars Switched by _____ at Omaha Station, Month of October 1905

Arbitrary Time Allowance _____ Days.

Correct: Endorsed: Filed Jan 24 1907 Correct:

Geo. H. Thummel, Clerk.

Agent

19

Agent

1

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.**AMERICAN RAILWAY ASSOCIATION PER DIEM RULE
NO. 5 READS:**

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

In order to follow out this rule, all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

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Exhibit 27 **UNION PACIFIC RAILROAD COMPANY.**

Inter.

PER DIEM RECLAIM STATEMENT.Statement of Cars Switched by Union Pacific Railroad Company for C G W Ry778 at Omaha Station, Month of November 1905

Arbitrary Time Allowance _____ Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
1	1	C. & N.W.	67200	C. & N.W.		49		M. & O.	6536	M. & O.	
2		M. & O.	12054	M. & O.		50		Wab.	65113	Wab.	
3		C. & N.W.	63980	C. & N.W.		51					
4		M. & O.	9152	M. & O.		52					
5		C. & N.W.	71084	C. & N.W.		53	9	C. & N.W.	83168	B. & M.R.	
6		—	29562	—		54					
7		S.I.	822	R.I.		55					
8		—	1648	—		56	10	C.G.W.	15660	M. & O.	
9						57					
10						58					
11	2	C.G.W.	14706	B. & M.R.		59	11	C.I. & L.	17011	B. & M.R.	
12		—	1772	M. & O.		60					
13						61					
14						62	13	P.M.	40810	B. & M.R.	
15	3	M.C.	5456			63					
16		N.Y.C.St.L.	24006	C. & N.W.		64					
17		G.R. & I.	2715	—		65	14	MOP	33738	MOP	
18		C. & N.W.	79880	C. & N.W.		66		St.L. & S.F.	12081	B. & M.R.	
19		At. & S.F.	23671	B. & M.R.		67		P.M.	42854	MOP	
20		C.B. & O.	32822	—		68		C.G.W.	13770	B. & M.R.	
21		C.G.W.	14542	—		69					
22						70					
23						71	15	C.M. & St.P.	54752	Mil.	
24	4	C.St.P.K.C.	8040	M. & O.		72		C.R.I. & T.	150677	R.I.	
25						73		C.G.W.	10142	B. & M.R.	
26						74		No. Pac.	23014	—	
27	6	S.I.	1171	R.I.		75		C. & N.W.	66772	M. & O.	
28		—	1465	—		76		C.St.P.K.C.	9962	—	
29		MOP	19956	MOP		77					
30		C. & N.W.	12614	C. & N.W.		78					
31		C.G.W.	2044	B. & M.R.		79	16	St.L. & S.F.	32859	B. & M.R.	
32		Wab.	64990	—		80		Southern	17004	MOP	
33						81		T. & P.	10078	—	
34						82		K.C.S.	11145	—	
35	7	Ill.Cent.	7483	B. & M.R.		83					
36		B.C.R. & N.	13026	R.I.		84					
37						85	17	C. & N.W.	59196	C. & N.W.	
38						86		C.G.W.	17476	B. & M.R.	
39	8	C.R.I. & P.	50754	R.I.		87					
40		S.A.L.	18659	M. & O.		88					
41		C. & N.W.	61382	C. & N.W.		89	18	C.St.P.K.C.	10766	B. & M.R.	
42		G.I.	3516	R.I.		90		Co. & G.	1889	M.P.	
43		Southern	11011			91		C.R.I. & P.	54547	R.I.	
44		C.R.I. & P.	60120	R.I.		92		C.M. & St.P.	74908	Mil.	
45		C. & N.W.	72770	C. & N.W.		93		MOP	15333	MOP	
46		M.K.T.	13025	B. & M.R.		94		St.L. & S.F.	40688	—	
47		W.C.	6074	—		95		L.V.	81059	B. & M.R.	
48		C.B. & O.	26554	B. & M.R.		96		S.I.	1100	—	
TOTAL											

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

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At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for C G W Ryat Omaha Station, Month of November 1905

Arbitrary Time Allowance _____ Days.

Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
19	C.G.W.	12156	M. & O.		49		Ill. Cent.	17367	Ill. Cent.	
					50		C.G.W.	50350	B. & M.R.	
					51		MOP	30919	—	
					52		C.G.W.	17234	—	
20	Gt.	41059	M. & O.		53					
	C.M. & St. P.	72818	Mil.		54					
	C.G.W.	15912	B. & M.R.		55					
	M. & O.	19318	M. & O.		56					
	C. & N.W.	81728	C. & N.W.		57					
	C.R.I. & T.	150677	R.I.		58					
	C. & N.W.	84986	C. & N.W.		59					
					60					
					61					
21	C.G.W.	17354	M. & O.		62					
	C.M. & St. P.	21080	B. & M.R.		63					
	C.G.W.	10830	—		64					
	C.G.W.	2004	—		65					
	B. & O.	165184	M.P.		66					
	St. L. & S.F.	13136	—		67					
	MOP	33842	MOP		68					
	T. & P.	13190	—		69					
					70					
					71					
22	Ill. Cent.	28385	MOP		72					
	L. & N.	9425	—		73					
	C.M. & St. P.	16580	Mil.		74					
	MOP	20885	MOP		75					
					76					
					77					
24	C.G.W.	12732	B. & M.R.		78					
					79					
					80					
25	C.G.W.	10934	B. & M.R.		81					
	—	42042	—		82					
					83					
					84					
26	P.C.C. & St. L.	3481	B. & M.R.		85					
					86					
					87					
27	Southern	36067	B. & M.R.		88					
					89					
					90					
28	C.G.W.	2299	B. & M.R.		91					
					92					
					93					
29	M. & O.	19528	M. & O.		94					
	D. & R. O.	60035			95					
	C.M. & St. P.	56714	Mil.		96					
TOTAL										

Correct: Endorsed: Filed Jan 24 1907 Correct:

Geo. H. Thummel, Clerk.

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE

NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

In order to follow out this rule, all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

Exhibit 28 UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched By Union Pacific Railroad Company for C G W Ry

780 at Omaha Station, Month of December 1905

Arbitrary Time Allowance Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
1	2	CM. & St. P.	16436	B. & M. R.		49		Ill. Cent.	35834	Ill. Cent.	
2		M. C.	46575	—		50		—	45875	—	
3		Gl.	10446	MOP		51		—	37448	—	
4		Mo. Pac.	23014	B. & M. R.		52					
5						53					
6	4	N. Y. C. St. L.	16289	B. & M. R.		54	15	C. & N. W.	72334	C. & N. W.	
7		C. & N. W.	36516	C. & N. W.		55					
8		C. B. & Q.	96214	B. & M. R.		56					
9		C. B. & Q.	42894			57	16	Ill. Cent.	39826	Ill. Cent.	
10						58		—	46357	—	
11						59		—	39043	—	
12	5	C. M. & St. P.	58106	B. & M. R.		60		L. S. & M. S.	42974	—	
13		M. C.	11717	—		61		B. & O.	58992	—	
14						62		L. V.	74224	—	
15						63		L. S. & M. S.	44596	—	
16	6	M. & O.	11952	M. & O.		64		N. Y. C. St. L.	13992	—	
17						65		W. L. E.	21029	—	
18						66		N. C. St. L.	10410	—	
19	7	MOP	17204	MOP		67		P. R. R.	75792	—	
20		P. R. R.	83491	B. & M. R.		68		L. S. & M. S.	46637	—	
21		C. A. R.	6013	M. & O.		69		St. L. & S. F.	32385	R. I.	
22		P. F. W. & C.	7856	—		70		Ill. Cent.	11903	Ill. Cent.	
23		P. R. R.	81984	—		71		—	17616	—	
24						72		—	22228	—	
25						73		—	35447	—	
26						74		—	46175	—	
27	8	C. M. & St. P.	74156	B. & M. R.		75		—	8410	—	
28						76		C. B. & Q.	25631	B. & M. R.	
29						77		—	9950	—	
30	11	C. M. & St. P.	67072	B. & M. R.		78					
31		C. & N. W.	75812	C. & N. W.		79					
32		—	66370	—		80	17	C. G. W.	2189	B. & M. R.	
33		M. & O.	18120	—		81					
34		P. F. W. & C.	7856	—		82					
35		C. G. W.	50546	M. & O.		83	18	C. G. W.	46070	B. & M. R.	
36						84		M. & O.	11632	M. & O.	
37						85		—	10218	—	
38	12	F. & S. W.	10432	B. & M. R.		86		At. & S. F.	17404	—	
39						87					
40						88					
41	13	C. G. W.	50046	B. & M. R.		89	20	N. Y. C. H. R.	93540	B. & M. R.	
42		Ill. Cent.	23012	R. I.		90		Ill. Cent.	26724	M. & O.	
43		P. M.	32192	B. & M. R.		91		St. L. S. W.	18504	O. B. T.	
44						92		Ill. Cent.	13541	—	
45						93		—	13553	—	
46	14	C. R. I. E. P.	250227	R. I.		94		—	11129	—	
47		Ill. Cent.	34564	Ill. Cent.		95		—	21982	—	
48		—	37437	—		96		—	19715	—	
TOTAL											

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

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UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched By Union Pacific Railroad Company for C G W Ry781 at Omaha Station, Month of December 1905Arbitrary Time Allowance Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
1	20	Ill. Cent.	13167	O.B.T.		49		C.G.W.	12800	MOP	
2		—	12741	—		50		—	17026	—	
3		—	24093	—		51		—	17976	—	
4		—	23243	—		52					
5		—	33782	—		53					
6		—	45126	—		54	24	C.G.W.	7170	MOP	
7		—	21861	—		55		M.K.T.	40091	B. & M.R.	
8		Gn.	36702	—		56					
9		Ill. Cent.	26967	—		57					
10		M. & O.	18746	M. & O.		58	25	C.C.C. & St. L.	5381	B. & M.R.	
11		—	7134	—		59		C.L. & W.	7765	—	
12		—	5578	—		60		Erie	97042	MOP	
13		—	17116	—		61					
14		—	20234	—		62					
15		C. & N.W.	81754	C. & N.W.		63	26	C.G.W.	42123	B. & M.R.	
16		M. & O.	19294	M. & O.		64		C.St.P. K.C.	10730	—	
17		—	12058	—		65					
18		C. & N.W.	38956	C. & N.W.		66					
19		P.R.R.	94700	—		67	27	C.St.P. K.C.	8698	MOP	
20		C. & N.W.	71808	M. & O.		68		C.G.W.	2942	—	
21		M. & O.	7034	—		69		No. Pac.	37789	B. & M.R.	
22		—	7468	—		70		C. & N.W.	56160	C. & N.W.	
23		C.R.I. & P.	7432	R.I.		71		C.R.I. & P.	56269	R.I.	
24		—	—	—		72		K.C.M. & O.	8770	—	
25		—	—	—		73		C. & N.W.	8514	C. & N.W.	
26	21	C.St.P. K.C.	10680	MOP		74		K.C.S.	40670	—	
27		W.S.	23463	—		75		M. & O.	11358	M. & O.	
28		C.G.W.	1942	—		76		C. & N.W.	36350	C. & N.W.	
29		—	2130	—		77		—	95208	—	
30		M. & O.	13560	M. & O.		78		—	37954	—	
31		—	14572	—		79		—	49550	—	
32		—	5490	—		80					
33		C. & N.W.	80384	C. & N.W.		81					
34		M. & O.	15900	M. & O.		82	28	C.B. & O.	3277	B. & M.R.	
35		C. & N.W.	53988	C. & N.W.		83		M. & N.W.	1324	—	
36		M.K.T.	12726	—		84					
37		C. & N.W.	80560	—		85					
38		—	6496	—		86	29	C.S. Ry.	97556	MOP	
39		—	43104	—		87		C.G.W.	15662	—	
40		—	37884	—		88		F.S. & W.	10432	—	
41		—	—	—		89		N.Y. C.H.R.	93540	—	
42		—	—	—		90		C.G.W.	2408	—	
43	22	B. & O.	75253	MOP		91					
44		M. & St. L.	8952	—		92					
45		—	—	—		93	30	C.G.W.	13638	MOP	
46		—	—	—		94		C. & N.W.	62242	C. & N.W.	
47	23	P.R.R.	166185	B. & M.R.		95		—	70834	—	
48		C.G.W.	9256	MOP		96					
TOTAL											

Correct: •

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

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UNION PACIFIC RAILROAD COMPANY.

PER DIEM RECLAIM STATEMENT.

Inter

Statement of Cars Switched by Union Pacific Railroad Company for C G W_R yat Omaha Station, Month of December 1905

Arbitrary Time Allowance _____ Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard
1	31	C.G.W.	14120	B. & M.R.		49					
2		C.C.C. & St. L.	7722	—		50					
3						51					
4						52					
5						53					
6						54					
7						55					
8						56					
9						57					
10						58					
11						59					
12						60					
13						61					
14						62					
15						63					
16						64					
17						65					
18						66					
19						67					
20						68					
21						69					
22						70					
23						71					
24						72					
25						73					
26						74					
27						75					
28						76					
29						77					
30						78					
31						79					
32						80					
33						81					
34						82					
35						83					
36						84					
37						85					
38						86					
39						87					
40						88					
41						89					
42						90					
43						91					
44						92					
45						93					
46						94					
47						95					
48						96					
TOTAL											

Correct: Endorsed: Filed Jan 24 1907 Correct:

Geo. H. Thummel, Clerk.

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

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UNION PACIFIC RAILROAD COMPANY.

PER DIEM RECLAIM STATEMENT.

Inter

By Union Pacific Railroad Company

Statement of Cars Switched for

C St P M & O

R Y

at Omaha Station, Month of December 190 5

Arbitrary Time Allowance

Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard
1	3	C.B.&Q.	39366	R.I.		49	17	M.&O.	15900	C.G.W.	
2						50		M.L.T.	30727	—	
3						51		M.&O.	19294	—	
4	7	C.G.W.	13850	C.G.W.		52		C.&N.W.	81754	—	
5						53		M.&O.	20234	—	
6						54		C.B.&Q.	25697	—	
7	8	Co.&G.	1764	R.I.		55		M.&O.	17116	—	
8						56		—	12978	—	
9						57		C.&N.W.	38956	—	
10	9	C.&N.W.	60280	R.I.		58		P.R.R.	94700	—	
11						59		C.&N.W.	80384	—	
12						60		M.&O.	15900	—	
13	10	C.&N.W.				61					
14		M.O.P.	31360	C.G.W.		62					
15		C.M.&St.P.	49732	—		63	18	C.G.W.	14572	C.G.W.	
16		M.&O.	12282	—		64		—	5490	—	
17		—	19768	—		65		C.&N.W.	53988	—	
18		—	4316	—		66		M.K.T.	12726	—	
19		—	11392	—		67		C.&N.W.	80560	—	
20		—	16238	—		68		—	37884	—	
21						69					
22						70					
23	11	M.&O.	16238	C.G.W.		71	21	C.R.I.&P.	75066	R.I.	
24						72					
25						73					
26	13	C.M.&S.P.	37746	Mil.		74	22	C.R.I.&P.	56830	R.I.	
27		C.R.I.&P.	50037	R.I.		75					
28						76					
29						77	25	K.C.S.	13954	R.I.	
30	14	M.&O.	5578	C.G.W.		78					
31		—	7134	—		79					
32		—	18746	—		80	26	C.R.I.&P.	61113	R.I.	
33		—	11632	—		81					
34		—	10218	—		82					
35		—	15900	—		83	29	C.R.I.&P.	15609	R.I.	
36		At.&S.F.	17464	—		84					
37						85					
38						86	30	C.&N.W.	41016	R.I.	
39	15	C.R.I.&P.	67335	R.I.		87		K.C.F.I.&M.	22093	—	
40		M.&O.	5490	C.G.W.		88					
41		—	14572	—		89					
42						90					
43						91					
44	16	M.&O.	7468	C.G.W.		92					
45		—	7034	—		93					
46						94					
47						95					
48						96					
TOTAL											

Correct: Endorsed: Filed Jan 24 1907 Correct:

Geo. G. Thummel, Clerk.

Agent

R

Agent

R

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE**NO. 5 READS:**

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

In order to follow out this rule, all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

PER DIEM RECLAIM STATEMENT. By Union Pacific Railroad Company C St P M & O

Inter Statement of Cars Switched ⁴for _____ R Y

at Omaha Station, Month of November 1905

Arbitrary Time Allowance _____ Days.

Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard
4	M. & O.	14112	C.G.W.		49					
		16536			50					
6	M. & O.	14112	C.G.W.		51					
					52					
					53					
					54					
9	C. & N.W.	72526	R.I.		55					
	At. & S.F.	31334			56					
	L.S. & M.S.	24943	Mil.		57					
					58					
					59					
10	C.R.I. & P.	61990	R.I.		60					
					61					
					62					
11	C.M. & St. P.	26734	Mil.		63					
	At. & S.F.	30967	R.I.		64					
13	Soo Line	20550	Mil.		65					
					66					
					67					
15	C.St.P.K.C.	8040	C.G.W.		68					
					69					
					70					
16	C.R.I. & P.	16135	R.I.		71					
					72					
					73					
22	P.R.R.	100725	C.G.W.		74					
					75					
					76					
23	P.F.W. & C.	11021	R.I.		77					
					78					
					79					
24	C.M. & St. P.	29594	Mil.		80					
					81					
					82					
25	Wab.	64195	R.I.		83					
	C.G.W.	17354	C.G.W.		84					
					85					
					86					
28	M. & O.	18952	C.G.W.		87					
	C.G.W.	2001			88					
					89					
					90					
29	C.M. & St. P.	39694	Mil.		91					
					92					
					93					
30	C.R.I.E.P.	265028	R.I.		94					
					95					
					96					
TOTAL										

Correct: **Endorsed: Filed Jan 24 1907** Correct:

Geo. O. Thummel, Clerk.

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE

NO. 5 READS.

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory.

In order to follow out this rule, all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

PER DIEM RECLAIM STATEMENT. By Union Pacific Railroad Company C. St. P.M. & O.

Inter

Statement of Cars Switched ⁴for _____ R Yat Omaha Station, Month of October 1905

Arbitrary Time Allowance _____ Days.

DATE Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	DATE Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard
2	C.R.I. & P.	61094	R.I.		49		M. & O.	12054	C.G.W.	
					50		G.R. & I.	2715	—	
5	C.G.W. M.C. St. L. & S.F.	12760 14790 34287	R.I. — —		51	31	C. & N.W.	12606	R.I.	
					52					
8	C. & E.I.	60099	R.I.		53					
					54					
10	C.M. & St. P.	16860	Mil.		55					
					56					
13	C.M. & St. P.	74256	Mil.		57					
					58					
16	C.G.W.	2352	C.G.W.		59					
					60					
18	P. & R.	19410	R.I.		61					
					62					
20	M. & O.	2261	C.G.W.		63					
	—	14631	—		64					
	—	1311	—		65					
	—	2265	—		66					
	—	12289	—		67					
	—	12157	—		68					
	—	1021	—		69					
	—	2281	—		70					
	—	14223	—		71					
	—	2425	—		72					
	—	12105	—		73					
	—	14699	—		74					
	C. & N.W.	46769	—		75					
					76					
21	M. & O.	1857	C.G.W.		77					
	—	2077	—		78					
	C.No. T.P.	1219	R.I.		79					
	D.L. & W.	26802	Mil.		80					
	C. & N.W.	17094	R.I.		81					
					82					
27	C.M. & St. P.	73354	Mil.		83					
	M. & O.	9152	C.G.W.		84					
					85					
					86					
					87					
					88					
					89					
					90					
					91					
					92					
					93					
					94					
					95					
					96					

Correct: **Endorsed: Filed Jan 24 1907** Correct:

Geo. H. Thummel, Clerk.

Agent

R

Agent

R

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

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This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

PER DIEM RECLAIM STATEMENT. By Union Pacific Railroad Company

Inter _____
Statement of Cars Switched ⁴for _____ C. St. P. M. & O. _____ R Y

at _____ Omaha _____ Station, Month of _____ September _____ 190 _____ 5

Arbitrary Time Allowance _____ Days.

DATE	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	DATE	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard
Rec'd						Rec'd				
1					49					
2	M. & O.	15798	C. G. W.		50					
3	—	16806	M. O. P.		51					
4	C. R. I. & P.	60354	R. I.		52					
5	C. M. & St. P.	23316	Mil.		53					
6					54					
7					55					
8	M. & O.	14699	R. I.		56					
9	—	23486	—		57					
10					58					
11	C. R. I. & P.	5312	R. I.		59					
12					60					
13	C. R. I. & P.	57930	R. I.		61					
14					62					
15	C. R. I. & P.	57930	R. I.		63					
16					64					
17	M. & O.	12870	R. I.		65					
18					66					
19					67					
20	M. & O.	4413	R. I.		68					
21					69					
22					70					
23	C. R. I. & P.	90403	R. I.		71					
24					72					
25					73					
26					74					
27	C. & E. I.	12107			75					
28	C. St. P. K. C.	10308			76					
29					77					
30					78					
31	C. R. I. & P.	85071	R. I.		79					
32					80					
33					81					
34	N. & W.	20104			82					
35					83					
36					84					
37	M. & O.	4261	R. I.		85					
38					86					
39					87					
40	C. R. I. & P.	60348	R. I.		88					
41					89					
42					90					
43					91					
44					92					
45					93					
46					94					
47					95					
48					96					

Correct: Endorsed: Filed Jan 24 1907 Correct:

Geo. H. Thummel, Clerk.

Agent _____ R _____ Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.**AMERICAN RAILWAY ASSOCIATION PER DIEM RULE
NO. 5 READS.**

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UNION PACIFIC RAILROAD COMPANY.

PER DIEM RECLAIM STATEMENT.

By Union Pacific Railroad Company

C St P M & O

Inter

Statement of Cars Switched ⁴for

R Y

at Omaha

Station, Month of

August

1905

Arbitrary Time Allowance

Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard
1	1	Co. & G.	4339	R.I.		49		C.M. & St. P.			
2		St. L. & S. F.	49914	—		50		C.G.W.	20933	Mil.	
3						51			1940	C.G.W.	
4						52					
5	3	C.R.I. & P.	85250	R.I.		53					
6						54					
7						55					
8	4	C.O. & G.	5592	R.I.		56					
9						57					
10						58					
11	5	C.R.I. & P.	86011	R.I.		59					
12		C.G.W.	2025	C.G.W.		60					
13						61					
14						62					
15	6	Co. & G.	8938	R.I.		63					
16						64					
17						65					
18	7	B.C.R. & N.	2311	R.I.		66					
19						67					
20						68					
21	10	C.M. & St. P.	22694	Mil.		69					
22		C.R.I. & T.	170001	R.I.		70					
23						71					
24						72					
25	13	R.I.	86542	R.I.		73					
26		C.R.I. & T.	150008	—		74					
27						75					
28						76					
29	16	C.R.I. & P.	86150	R.I.		77					
30						78					
31						79					
32	21	B.C.R. & N.	2187	R.I.		80					
33						81					
34						82					
35	22	C.R.I. & P.	265031	R.I.		83					
36						84					
37						85					
38	23	C.R.I. & P.	90193	R.I.		86					
39						87					
40						88					
41	25	C.R.I. & P.	86474	R.I.		89					
42						90					
43						90					
44	27	C.R.I. & P.	66244	R.I.		92					
45						93					
46	29	C.M. & St. P.	23820	Mil.		94					
47		—	15489	—		95					
48						96					
TOTAL											

Correct: Endorsed: Filed Jan 24 1907 Correct:

Geo. H. Thummel, Clerk.

Agent

R

Agent

R

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 6 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory.

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UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for B & M R Ryat Omaha Station, Month of August 190 6 (5)

Arbitrary Time Allowance

Days.

1	1	C.R.I. & E.P.	250040	H. & m.e.	49	C.M. & St.P.	40268	Mil.
2		C.B. & Q.	27959	C.G.W.	50	—	52282	—
3		C.M. & St.P.	57720	H. & m.e.	51			
4		Co. & G.	1781	—	52			
5					53	9 C.M. & St.P.	22123	Mil.
6					54	—	41072	—
7	2	K.C.F.S. & M.	13809	R.I.	55	G.C. & S.F.	3649	—
8		C.R.I. & P.	56587	—	56	C.G.W.	15066	C.G.W.
9		C.B. & Q.	24988	C.G.W.	57	M. & St.L.	609	C. & N.W.
10		—	32526	—	58			
11					59			
12					60	10 N.Y.O. & W.	9523	Mil.
13	3	C.R.I. & P.	57427	R.I.	61	At. & S.F.	17241	—
14		—	53770	—	62	—	21906	—
15		S.I.	3781	C.G.W.	63	C.R.I. & P.	52997	R.I.
16		—	988	—	64	—	85328	—
17		C.M. & St.P.	24350	Mil.	65	D.L. & W.	30286	—
18		P.R.R.	69878	—	66	C.R.I. & P.	55185	—
19		C.M. & St.P.	23498	—	67			
20					68			
21					69	11 C.R.I. & P.	54433	R.I.
22	4	C.M. & St.P.	74142	Mil.	70	C. & N.W.	84542	C. & N.W.
23		S.I.	2123	C.G.W.	71	S.I.	1744	C.G.W.
24		C.G.W.	17020	C.G.W.	72	C.M. & St.P.	29631	Mil.
25					73	—	28937	—
26					74	—	41218	—
27	5	C.M. & St.P.	60520	Mil.	75	L.S. & M.S.	43278	—
28		—	56188	—	76	T.St.L.W.	5121	R.I.
29		C.R.I. & P.	85666	R.I.	77	C.A.C.	4382	—
30		C.M. & St.P.	19843	Mil.	78	St.L. & S.F.	16346	—
31		C.R.I. & P.	54433	R.I.	79	N.Y.C.H.R.	61085	Mil.
32		N.Y.O. & W.	9523	Mil.	80			
33		M. & St.L.	6312	R.I.	81			
34		C.M. & St.P.	36800	Mil.	82	13 Ia.Cent.	04660	C. & N.W.
35	6	C.R.I. & P.	54272	R.I.	83	C.M. & St.P.	41008	Mil.
36					84	P. & R.	17327	—
37					85	L.S. & M.S.	43544	—
38	7	Co. & G.	11504	R.I.	86	C.R.I. & P.	53367	R.I.
39		C.R.I. & P.	57814	—	87	C.G.W.	10810	C.G.W.
40					88	C.M. & St.P.	70370	Mil.
41					89	—	41218	—
42	8	N.Y.C.H.R.	54329	Mil.	90	—	43946	—
43		C.G.W.	9670	C.G.W.	91			
44		C.R.I. & P.	85488	R.I.	92			
45		D.L. & W.	35332	—	93	15 C.G.W.	14400	C.G.W.
46		M.O.P.	19168	MOP	94	C.M. & St.P.	68722	Mil.
47		St.L. & S.F.	15219	Mil.	95	P. & L.E.	1876	R.I.
48		C. & N.W.			96	C.R.I. & P.	55449	—
TOTAL								

Correct:

Correct:

Agent

R

Agent

R

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.**AMERICAN RAILWAY ASSOCIATION PER DIEM RULE
NO. 5 READS:**

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UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for B & M R Ry

89 at Omaha Station, Month of August 190 5

Arbitrary Time Allowance

Days.

Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
15	N.Y.C.H.R.	56125	R.I.		49	C.&N.W.	83014	C.&N.W.		
	C.R.I.&P.	51362	—		50	St.L.S.W.	11344	R.I.		
	Gt.	13145	C.G.W.		51					
	B.&O.	36621	—		52					
	P.F.W.&C.	5819	Mil.		53	19 C.R.I.&M.	350484	R.I.		
	C.M.&St.P.	20259	—		54	C.M.&St.P.	73424	Mil.		
	—	19843	—		55					
	L.E.&W.	10760	R.I.		56					
	C.M.&St.P.	62562	C.M.&St.P.		57	20 Co.&G.	9227	R.I.		
	C.B.&Q.	29455	C.G.W.		58	B.C.R.&N.	13667	—		
	—	34172	—		59	C.R.I.&M.	350358	—		
	C.M.&St.P.	66984	Mil.		60	C.G.W.	12804	C.G.W.		
					61	C.B.&Q.	30442	—		
					62	N.Y.C.H.R.	61963	Mil.		
16	C.R.I.&P.	50401	R.I.		63					
	W.C.	20504	—		64					
	D.L.&W.	14983	—		65	21 C.B.&Q.	57	C.G.W.		
	C.M.&St.P.	72266	Mil.		66	N.Y.C.H.R.	59167	—		
	Gt.	22989	C.G.W.		67	L.S.&M.S.	46208	—		
	C.&O.	7293	—		68	P.M.	43081	—		
	N.C.R.	7658	R.I.		69	N.Y.C.H.R.	63037	—		
	P.R.R.	76358	Mil.		70	P.R.R.	14039	—		
	C.R.I.&P.	56978	R.I.		71	C.R.I.&P.	55429	R.I.		
	D.L.&W.	32564	—		72	C.C.C.&St.L.	10593	Mil.		
	C.R.I.&P.	51313	—		73	C.&O.	10836	—		
	Gt.	24026	Mil.		74	Gn.	72250	C.G.W.		
					75	M.C.	46870	—		
					76	C.M.&St.P.	58604	Mil.		
17	C.G.W.	14584	C.G.W.		77					
	G.B.&W.	1928	—		78					
	Erie	69623	Mil.		79	23 C.M.&St.P.	49820	Mil.		
	D.L.&W.	29971	R.I.		80	B.C.R.&N.	33003	R.I.		
	C.R.I.&P.	52709	—		81	C.G.W.	13298	C.G.W.		
	N.Y.C.H.R.	44771	—		82	C.M.&St.P.	66650	Mil.		
	D.L.&W.	2701	—		83					
	C.B.&Q.	24655	C.G.W.		84					
	St.L.K.C.	650	R.I.		85	24 B.C.R.&N.	10381	R.I.		
	H.V.	30754	Mil.		86	C.M.&St.P.	55488	Mil.		
					87	C.R.I.P.	61522	R.I.		
					88	C.G.W.	14862	C.G.W.		
18	Ia. Cent.	03050	Mil.		89	C.R.I.&P.	61705	R.I.		
	At.&S.F.	21906	—		90	C.M.&St.P.	59616	Mil.		
	Erie	80522	—		91	C.R.I.&M.	350597	R.I.		
	C.N.	2373	—		92					
	Ill.Cent.	7650	C.G.W.		93					
	C.B.&Q.	28216	—		94	25 C.R.I.&P.	8660	R.I.		
	C.&N.W.	94326	C.&N.W.		95	C.G.W.	12676	C.G.W.		
					96					
TOTAL										

Correct:

Correct:

Agent

R

Agent

R

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

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This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for B & M R Ryat Omaha Station, Month of August 1905

Arbitrary Time Allowance

Days.

25	Gt.	8467	C.G.W.	49	31	St.L.S.W.	5032	R.I.
	C.G.W.	14436	—	50		C.R.I. & P.	57206	—
	C.B. & Q.	25333	Mil.	51		—	56134	—
	M. & I.	1104	C.G.W.	52		—	56606	—
	C. & N.W.	41643	C. & N.W.	53		MOP	12559	C.G.W.
	C.R.I. & P.	56340	R.I.	54		L.S. & M.S.	33373	R.I.
	—	57732	—	55		C.M. & St.P.	66000	Mil.
	C.R.I. & M.	150767	—	56		Gt.	11057	C.G.W.
	St.L.S.W.	15104	—	57				
	—	19666	—	58				
	—	14528	—	59				
				60				
				61				
26	C.R.I. & T.	150008	R.I.	62				
	C.M. & St.P.	29248	Mil.	63				
	C.R.I. & P.	52532	R.I.	64				
	—	56340	—	65				
				66				
				67				
27	Bost. & Me.	1806	R.I.	68				
	C.M. & St.P.	71542	Mil.	69				
	N.Y.C.H.R.	97038	R.I.	70				
	B.C.R. & N.	4584	—	71				
	K.C.P. & G.	8727	—	72				
	Erie	78720	Mil.	73				
				74				
				75				
28	C.B. & Q.	29440	Mil.	76				
	H. & St.J.	7128	—	77				
				78				
				79				
29	C.M. & St.P.	63092	Mil.	80				
	C. & N.W.	45539	C.N. & W.	81				
	No. Pac.	38783	R.I.	82				
	C.R.I. & P.	2055	—	83				
	—	5624	—	84				
	Erie	6265	Mil.	85				
	P.L.E.	1933	—	86				
				87				
				88				
30	C.M. & St.P.	30601	Mil.	89				
	M.C.	42281	R.I.	90				
	C.G.W.	16584	C.G.W.	91				
	—	15890	—	92				
	C.M. & St.P.	50644	Mil.	93				
	D. & H.Co.	18188	—	94				
	C.M. & St.P.	40248	—	95				
				96				
TOTAL								

Correct: Endorsed: Filed Jan 24 1907 Correct:

Geo. H. Thummel, Clerk.

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS.

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

In order to follow out this rule all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

Inter. PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for B & M R Ry

at Omaha Station, Month of September 190 5

Arbitrary Time Allowance

Days.

1	B.C.R. & N.	9547	R.I.	49	NY.C.H.R.	56895	R.I.
				50	C.M. & St.P.	49618	Mil.
				51	Ill.Cent.	2704	O.B.T.
2	C.R.I. & P.	56688	R.I.	52			
	NY.C.H.R.	40204		53			
	M.C.	46384	R.I.	54	8 C.R.I. & P.	6586	R.I.
	C.B. & Q.	32919	Mil.	55	C.M. & St.P.	60002	Mil.
	L.S. & M.S.	2062	R.I.	56			
				57			
				58	9 C.M. & St.P.	45674	Mil.
3	C.M. & St.P.	73714	Mil.	59		66720	
	—	16014		60	Wab.	67994	O.B.T.
	E.L.	60216	C.G.W.	61	—	62067	
	C.B. & Q.	39520	Mil.	62	—	60871	
	S.F.R.D.	4828		63	—	63319	
	—	4013		64	—	68480	
	—	4934		65	—	64716	
				66	—	51720	
				67	Erie	98478	Mil.
4	M.C.	42775	C.G.W.	68	C.M. & St.P.	39504	
	G.Bw.	1792		69			
	Ny.C.H.R.	91167		70			
	L.S. & M.S.	44870		71	10 C.M. & St.P.	65412	Mil.
	P.C.C.St.L.	2704		72	—	38744	
	L.S. & M.S.	43879		73	L.S. & M.S.	44554	R.I.
	C.R.I. & P.	51043	R.I.	74	C.M. & St.P.	73786	Mil.
	C.M. & St.P.	27395	Mil.	75	B. & O.	37190	R.I.
				76	M.C.	28106	
				77	C.M. & St.P.	55106	Mil.
5	C.B. & Q.	74701	R.I.	78	M.C.	21118	
	C.R.I. & P.	55193		79	D.H.Co.	18652	
	Ny.C.H.R.	36056	Mil.	80			
	C.H. & D.	6632	R.I.	81			
				82	11 L.S. & M.S.	44554	R.I.
				83	C.G.W.	50170	C.G.W.
6	C.R.I. & P.	90105	R.I.	84	12 C.M. & St.P.	66766	Mil.
	C.M. & St.P.	8244	Mil.	85	Gt.	5948	C.G.W.
	C.G.W.	14324	C.G.W.	86	C.M. & St.P.	52424	Mil.
	C.M. & St.P.	55624	Mil.	87	—	7304	
	Ill.Cent.	13353	O.B.T.	88	—	42740	
	Wab.	61806		89	L.S. & M.S.	42176	C.G.W.
	—	62075		90	C.G.W.	50588	
	—	61774		91			
	—	61116		92			
				93	13 C.M. & St.P.	55608	Mil.
7	Ny.C.H.R.	59451	R.I.	94	C.R.I. & T.	150008	R.I.
				95	C.M. & St.P.	23844	Mil.
				96			
TOTAL							

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE

NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

In order to follow out this rule, all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for B & M R Ryat Omaha Station, Month of September 1905

Arbitrary Time Allowance _____ Days.

14	C.M. & St.P. L. & N. C.G.W. C.M. & St.P. C.R.I. & P. D.L. & W.	57620 12385 8108 55624 61614 26250	Mil. — C.G.W. Mil. R.I. Mil.	49 50 51 52 53 54 55 56 57	21	C.M. & St.P. S.P. Can. Pac. C.R.I. & P. C.M. & St.P. P.CO.	50748 61004 85647 35676 9168 75260 96503	Mil. C.G.W. — R.I. Mil. R.I.
15	B. & O. G.N. C.M. & St.P. C.R.I. & P. — I.M. & S. C.G.W. C. & N.W. S.I. — C.M. & St.P.	89494 36988 73218 67487 51087 19220 14928 34942 4099 5466 68572	R.I. C.G.W. Mil. R.I. — MOP. — C. & N.W. C.G.W. — Mil.	58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73	22	C.G.W. N. & W. S.I. — C.M. & St.P. P. & L.E. C.M. & St.P. C.B. & Q. C.M. & St.P.	30124 20104 2065 4689 45892 4124 51644 23837 60424	C.G.W. M. & O. C.G.W. — Mil. C.G.W. Mil. — —
16	C. & N.W. M.C. C.G.W. P.R.R. St.L. & G.F.	93348 28023 14592 73469 34842	C. & N.W. — C.G.W. Mil. R.I.	74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96	23	C.G.W. C.M. & St.P. C.B. & Q. C.R.I. & P. — C.M. & St.P. C.G.W. K.C.F.S. & M C.B. & Q.	30190 71420 32166 52709 16143 58388 13638 11278 20696	C.G.W. Mil. — R.I. — Mil. C.G.W. Mil. —
17	C.M. & St.P. M. & O. L.S. & M.S. C.M. & St.P.	45044 15922 44416 24030	Mil. M. & O. R.I. Mil.	84 85 86 87 88 89 90 91 92 93 94 95 96	24	C.R.I. & P. C.M. & St.P. C.G.W. C.M. & St.P. A.T. & S.F.	3776 40770 15704 30786 23982	R.I. Mil. C.G.W. Mil. Mil.
18	Wab. — P.R.R.	65414 61251 27541	Wab. — Mil.	97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120	25	C.R.I. & P. C.M. & St.P. C.G.W. C.M. & St.P. A.T. & S.F.	63954 5439 65980 53644 55934	C. & N.W. C.G.W. Mil. — —
19	I.M. & S. C.R.I. & P. C.C.C. & St.L. C.M. & St.P. C.G.W. C.M. & St.P.	16205 56990 16343 58496 17986 74568 47704	Mil. R.I. — Mil. C.G.W. Mil. —		26	C. & N.W. C.G.W. C.M. & St.P.		C. & N.W. C.G.W. Mil.
TOTAL								

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

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INSTRUCTIONS.

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UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for B & M R Ryat Omaha Station, Month of October 1905

Arbitrary Time Allowance

Days.

1	1	C.B. & Q.	32790	Mil.	49	C.G.W.	13390	C.G.W.
2		C.G.W.	16594	C.G.W.	50			
3					51			
4					52	7	T & P.	4688
5	2	C. & N.W.	81646	C. & N.W.	53		C.B. & Q.	31956
6					54			23481
7					55			
8	3	C.M. & St.P.	36920	Mil.	56			
9		C.G.W.	46162	C.G.W.	57	8	C.G.W.	46218
10			12042		58		C.R.I. & P.	61982
11			7332		59			R.I.
12		C.H. & D.	46624	C. & N.W.	60			
13		C.R.I. & P.	15432	R.I.	61	10	C.M. & St.P.	39238
14		B. & O.	83438	Mil.	62			73344
15		C.M. & St.P.	51530	Mil.	63		Wab.	61306
16		B. & O.	37004	R.I.	64		F.S. & W.	5595
17		No. Pac.	15765	C. & N.W.	65		C.R.I. & P.	61709
18		C.G.W.	13406	C.G.W.	66		C. & N.W.	64416
19		S.A.L.	25246	Mil.	67		St.L. & S.F.	12493
20		C. & N.W.	76182		68		C.M. & St.P.	27590
21		Mo. Pac.	16213	C. & N.W.	69			
22			15741		70			
23		C.O. & G.	10969	R.I.	71	11	C.M. & St.P.	60516
24					72		L.V.	67210
25					73		P.M.	42504
26	4	C.M. & St.P.	24100	Mil.	74		C.M. & St.P.	69470
27			67894		75			69236
28		Wab.	61369	O.B.T.	76		C.G.W.	13058
29		C. & N.W.	59706	C. & N.W.	77			
30		C.G.W.	15876	C.G.W.	78			
31		C.M. & St.P.	24240	Mil.	79	12	C.G.W.	1996
32					80			17670
33					81			15302
34	5	M.C.	42587	Mil.	82			
35		B. & M.R.	3904		83			
36					84	13	C.G.W.	1376
37					85		C.St.P.K.C.	11618
38	6	C.R.I. & P.	7514	R.I.	86		C.M. & St.P.	58490
39		C. & N.W.	7872	C. & N.W.	87		C.B. & Q.	92200
40		C.C.C. & St.L.	14253	R.I.	88			
41		No. Pac.	7234		89			
42		C.M. & St.P.	56138	Mil.	90	14	C.B. & Q.	26937
43		C.G.W.	11422	C.G.W.	91		B. & O.	145509
44		C.R.I. & P.	61558	R.I.	92		S.I.	1747
45			56337		93			1435
46		Van Line	10174	C.G.W.	94		C.G.W.	14812
47		Mo. P.	16406	Mo. P.	95		B. & O.	90760
48					96			
TOTAL								

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

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Inter.

PER DIEM RECLAIM STATEMENT.

at Omaha Station, Month of October 1905

Arbitrary Time Allowance

Days.

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE
NO. 5 READS:

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UNION PACIFIC RAILROAD COMPANY.

Inter. **PER DIEM RECLAIM STATEMENT.**

Statement of Cars Switched by Union Pacific Railroad Company for B & M R Ry

at Omaha Station, Month of October 1905

Arbitrary Time Allowance

Days.

1	27	C.G.W.	60066	C.G.W.	49						
2		C.M. & St. P.	34306	Mil.	50						
3			65682		51						
4		Ill. Cent.	21209	O.B.T.	52						
5		T. & P.	11078	Mil.	53						
6		C.G.W.	17858	C.G.W.	54						
7		C.R.I. & T.	150299	R.I.	55						
8			150382		56						
9					57						
10					58						
11	28	C.M. & St. P.	70996	Mil.	59						
12		C.G.W.	17870	C.G.W.	60						
13		P.R.R.	85934	Mil.	61						
14		L.V.	73722	C.G.W.	62						
15		C.M. & St. P.	73690	Mil.	63						
16					64						
17					65						
18	29	C.G.W.	12128	G.C.W.	66						
19		C.M. & St. P.	6279	Mil.	67						
20		C.G.W.	46306	C.G.W.	68						
21		M.C.	44977	R.I.	69						
22		C.R.I. & P.	61524	R.I.	70						
23		C.M. & St. P.	74432	Mil.	71						
24		M.K.T.	14020	R.I.	72						
25		C.M. & St. P.	48536	Mil.	73						
26		C.R.I. & P.	52000	R.I.	74						
27		St. L. & S.F.	6604	O.P. & T.	75						
28					76						
29					77						
30	30	P.F.W. & C.	15105	C. & N.W.	78						
31					79						
32					80						
33	31	C.M. & St. P.	48192	Mil.	81						
34		C. & E.I.	61422	C. & N.W.	82						
35		C.G.W.	13298	C.G.W.	83						
36		N. & W.	22609	R.I.	84						
37		C.M. & St. P.	48076	Mil.	85						
38			63620		86						
39			38686		87						
40			75306		88						
41		P.F.W. & C.	4046	C.G.W.	89						
42					90						
43					91						
44					92						
45					93						
46					94						
47					95						
48					96						

Correct: **Endorsed: Filed Jan 24 1907** Correct:

Geo. H. Thummel, Clerk.

Agent R Agent R

(SEE OTHER SIDE FOR INSTRUCTIONS.)

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INSTRUCTIONS.

**AMERICAN RAILWAY ASSOCIATION PER DIEM RULE
NO. 5 READS,**

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

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UNION PACIFIC RAILROAD COMPANY.

Inter. **PER DIEM RECLAIM STATEMENT.**

Statement of Cars Switched by Union Pacific Railroad Company for B & M R Ry

at Omaha Station, Month of November 190 5

Arbitrary Time Allowance Days.

1	C.G.W.	8552	C.G.W.	49	9	C.M.& St.P.	41746	Mil.
				50		—	95028	—
2	C.R.I.& P.	56288	R.I.	51		N.Y.C.H.R.	61121	C.G.W.
	—	50947	—	52		Ill.Cent.	7483	O.B.T.
	S.I.	1538	C.G.W.	53		C.P.& St.L.	308	R.I.
	Ill.Cent.	46032	O.B.T.	54		C.R.I.& P.	56068	R.I.
	C.M.& St.P.	6429	Mil.	55				
	L.S.& M.S.	47017	—	56				
	C.M.& St.P.	56826	—	57	10	C.M.& St.P.	58270	Mil.
	N.Y.C.H.R.	59212	R.I.	58		C.P.& St.L.	1804	R.I.
	C.B.& Q.	25165	R.I.	59		C.& S.	2545	—
				60		C.R.I.& P.	2888	—
				61		Ill.Cent.	13471	O.B.T.
				62				
4	C.M.& St.P.	48536	Mil.	63				
	—	49540	—	64	11	C.M.& St.P.	41982	Mil.
	—	72320	—	65		—	72824	—
	C.& N.W.	44081	C.& N.W.	66		N.Y.C.H.R.	15633	R.I.
				67		C.R.I.& P.	61190	R.I.
5	M.K.T.	13025	C.G.W.	68		C.M.& St.P.	57508	Mil.
	C.M.& St.P.	48192	Mil.	69		—	55254	—
	M.C.	11951	—	70		K.C.S.	13134	R.I.
				71		C.R.I.& P.	53155	—
				72		—	7123	—
				73		P.M.	40367	—
6	C.R.I.& P.	54758	R.I.	74		C.R.I.& P.	53155	R.I.
	No.Pac.	16346	C.& N.W.	75		—	7123	—
	B.& O.	51015	R.I.	76				
7	P.S.M.	8700	—	77				
	C.M.& St.P.	32490	Mil.	78	12	K.C.S.	11134	R.I.
	—	48536	—	79		Wab.	62775	O.B.T.
	C.I.& L.	17036	R.I.	80		C.& N.W.	6792	C.& N.W.
8	N.Y.C.H.R.	24494	Mil.	81		M.& O.	16582	M.& O.
	C.M.& St.P.	59782	—	82		C.G.W.	17356	C.G.W.
	C.G.W.	14542	C.G.W.	83		M.& O.	22558	M.& O.
	M.C.	14801	Mil.	84		B.C.R.& N.	5432	R.I.
	N.Y.C.H.R.	44701	—	85		C.G.W.	50482	—
	C.M.& St.P.	71900	—	86		N.Y.C.H.R.	90397	—
	C.G.W.	14706	C.G.W.	87		Ill.Cent.	7614	—
	S.I.	773	R.I.	88		Gt.	22080	—
	—	1240	—	89				
	C.G.W.	12878	C.G.W.	90				
	C.St.P.K.C.	10620	—	91	31	C.B.& Q.	31007	R.I.
	C.G.W.	13984	—	92				
	Ill.Cent.	37489	O.B.T.	93				
	P.R.R.	180274	R.I.	94	14	C.M.& St.P.	50362	Mil.
				95		M.C.	11884	—
				96		C.R.I.& P.	57436	R.I.
TOTAL								

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

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UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for B & M R Ry798 at Omaha Station, Month of November 1905

Arbitrary Time Allowance

Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
1	14	Ill. Cent.	22576	O.B.T.		49		C.R.I. E. P.	250019	R.I.	
2						50		C.R.I. & P.	60350	—	
3						51		Co. & G.	11342	—	
4	15	C.M. & St. P.	38164	Mil.		52		C.G.W.	17384	C.G.W.	
5		C.R.I. & P.	54850	R.I.		53					
6		—	7139	—		54					
7		N.Y.C.H.R.	13813	R.I.		55	19	C.G.W.	13770	C.G.W.	
8		B. & O.	39246	—		56		C.B. & Q.	33087	R.I.	
9		C.R.I. & P.	57413	—		57		C.R.I. & P.	54953	—	
10		C.R.I. & W.	350091	—		58		C. & N.W.	5090	C. & N.W.	
11		C.R.I. & P.	54851	—		59		C.M. & St. P.	59118	Mil.	
12		B.C.R. & N.	9377	—		60		Co. & G.	10278	R.I.	
13		C.M. & St. P.	74684	Mil.		61		C.M. & St. P.	29958	Mil.	
14		N.Y.C.St.L.	15491	R.I.		62		H. & St. J.	6179	R.I.	
15		C.R.I. & P.	51037	—		63		C.M. & St. P.	44714	Mil.	
16						64		Ill. Cent.	20423	O.B.T.	
17						65		C.C.C. & St. L.	7246	R.I.	
18	16	Ill. Cent.	3323	O.B.T.		66					
19		P.M.	40810	C.G.W.		67					
20		C.R.I. & P.	7545	R.I.		68	20	C.G.W.	17474	C.G.W.	
21		Co. & G.	11278	—		69		C.R.I. & P.	56034	R.I.	
22		C.R.I. & P.	54037	—		70		—	5753	—	
23		—	56968	—		71		C.G.W.	15482	C.G.W.	
24		Mob. & Ohio	18100	—		72		L.S. & M.S.	24331	Mil.	
25		C.R.I. & P.	56582	—		73		C.G.W.	10142	C.G.W.	
26		—	50223	—		74					
27		P.Co.	28346	Mil.		75					
28						76	21	Wab.	64990	O.B.T.	
29						77		P.F.W. & C.	4653	C.G.W.	
30	17	N.Y.C.H.R.	61121	C.G.W.		78		C.M. & St. P.	50318	Mil.	
31		P.R.R.	81043	Mil.		79		C.G.W.	17056	C.G.W.	
32		C.R.I. & P.	56288	R.I.		80		—	10142	—	
33		—	57783	—		81		C. & N.W.	64842	—	
34		B.C.R. & N.	2032	—		82		C.M. & St. P.	54288	Mil.	
35		Southern	16592	Mil.		83		Co. & G.	1589	R.I.	
36		P.M.	40810	C.G.W.		84		B.C.R. & N.	6566	—	
37		C.R.I. & P.	7545	R.I.		85		C. & N.W.	64842	C.G.W.	
38	18	C.C.C. & St. L.	7246	—		86		C.R.I. & P.	5293	R.I.	
39		Ill. Cent.	20423	O.B.T.		87					
40		B.C.R. & N.	9209	R.I.		88					
41		C.R.I. & P.	57032	—		89	22	S.I.	1100	C.G.W.	
42						90		No. Pac.	23014	—	
43						91		C.R.I. & P.	90694	R.I.	
44	1	C.M. & St. P.	8209	Mil.		92		C.M. & St. P.	46432	Mil.	
45		C.R.I. & P.	61666	R.I.		93		C.G.W.	50568	C.G.W.	
46		—	61109	—		94					
47		Co. & G.	11152	—		95					
48		C.R.I. & P.	50121	—		96	23	L.S. & M.S.	32618	Mil.	
TOTAL											

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

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UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for B & M R Ryat Omaha Station, Month of November 1905

Arbitrary Time Allowance

Days.

23	C.M. & St. P.	56604	Mil.	49		A.O. & W.	70004	R.I.
	—	43974	—	50		Southern	36067	C.G.W.
	L.V.	60263	R.I.	51		I.M. & S.	19117	M.O.P.
	—	81059	—	52				
	C.M. & St. P.	74840	Mil.	53				
	Ill. Cent.	7614	R.I.	54	30	C.M. & St. P.	45288	Mil.
	C.I.L.	7667	—	55		N.Y.C.H.R.	57041	R.I.
	St. L. & G.	31716	—	56				
	L.V.	62480	—	57				
	Co. & G.	1392	—	58				
	C.R.I. & P.	3964	—	59				
	P.F.W. & C.	363	—	60				
	C.B. & Q.	42016	Mil.	61				
	C.R.I. & P.	57673	R.I.	62				
	—	61581	—	63				
				64				
				65				
25	C.M. & St. P.	23532	Mil.	66				
	—	66066	—	67				
	B.C.R. & N.	13423	R.I.	68				
	Co. & G.	1811	Mil.	69				
				70				
				71				
26	C.R.I. & P.	52541	R.I.	72				
	M.C.	19951	R.I.	73				
	Ill. Cent.	39469	O.B.T.	74				
	A.A.	175	R.I.	75				
				76				
				77				
27	C.M. & St. P.	43272	Mil.	78				
	—	70092	—	79				
	C. & O.	10279	R.I.	80				
	C.G.W.	2004	C.G.W.	81				
	C.R.I. & P.	16522	R.I.	82				
				83				
				84				
28	M.K.T.	2755	R.I.	85				
	C.G.W.	10830	C.G.W.	86				
	C.M. & St. P.	21080	Mil.	87				
	C.R.I. & P.	6903	R.I.	88				
	C.R.I. & M.	350133	—	89				
	C.R.I. & P.	5294	—	90				
				91				
				92				
29	C.G.W.	12732	C.G.W.	93				
	C. & N.W.	41557	C. & N.W.	94				
	C.M. & St. P.	73664	Mil.	95				
	P.Co.	17805	R.I.	96				
TOTAL								

Correct: **Endorsed: Filed Jan 24 1907** Correct:

Geo. H. Thummel, Clerk.

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

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UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for B & M R Ry

at Omaha Station, Month of December 190 5

Arbitrary Time Allowance

Days.

1	M. & O.	23648	Mil.	49	6	B.C.R. & N.	13531	R.I.
	C.St.P.K.C.	10766	C.G.W.	50		C.M. & St.P.	61226	Mil.
	C.B. & Q.	27295	Mil.	51		C.R.I. & P.	70019	R.I.
	C.M. & St.P.	25342	Mil.	52			6472	
	C.R.I. & P.	57773	R.I.	53		C.M. & St.P.	74686	Mil.
		50152		54		C.R.I. & P.	54523	R.I.
	K.C.F.I. & M.	2454		55		M.C.	44959	
	C. & A.	15323		56				
	C.R.I. & P.	16208		57				
		5957		58	7	G.T.	30113	R.I.
	B. & O.	83023	Mil.	59		N.Y.C.H.R.	62497	
				60			5953	
				61		M.C.	11717	C.G.W.
				62		P.M.	41605	Mil.
				63		C.M. & St.P.	32900	
				64				
				65				
				66	8	C.G.W.	50350	C.G.W.
				67		C.R.I. & M.	350670	R.I.
				68		No. Pac.	23014	C.G.W.
				69		C.R.I.E.P.	350795	R.I.
				70		C.R.I. & P.	54254	
				71		C.M. & St.P.	67396	Mil.
				72				
				73				
				74	9	C.C.C. & St.L.	43904	R.I.
				75		L.V.	71012	
				76		C.M. & St.P.	52218	Mil.
				77			45134	
				78			58106	
				79		No. Pac.	38793	
				80		C. & O.	5566	R.I.
				81		C.I. & L.	13150	Mil.
				82		P.F.W. & C.	235	
				83		D. & M.	808	
				84		N.Y.C.H.R.	4392	R.I.
				85		C.R.I. & P.	6644	
				86			52299	
				87				
				88				
				89				
				90	10	C. & N.W.	38860	C. & N.W.
				91		C.M. & St.P.	23390	Mil.
				92		C.B. & Q.	21225	
				93		C.M. & St.P.	50754	
				94				
				95	11	B.C.R. & N.	7318	R.I.
				96		C.R.I. & P.	50592	

TOTAL								
-------	--	--	--	--	--	--	--	--

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.**AMERICAN RAILWAY ASSOCIATION PER DIEM RULE****NO. 6 READS:**

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

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UNION PACIFIC RAILROAD COMPANY.

Inter. **PER DIEM RECLAIM STATEMENT.**

Statement of Cars Switched by Union Pacific Railroad Company for B & M R Ry

at Omaha Station, Month of December 190 5

Arbitrary Time Allowance

Days.

11	C.M. & St. P.	6402	Mil.	49	St. L. & S.W.	18504	C.G.W.
	B. & O.	96094	—	50	Mo. P.	16352	Mo. P.
	C.R.I. & P.	57481	R.I.	51	C. & N.W.	68028	C. & N.W.
	C.M. & St. P.	24664	Mil.	52			
	C.B. & Q.	24833	C.G.W.	53			
	—	29741	—	54	15 B. & O.	79840	R.I.
	B. & M.R.	8532	—	55	C.M. & St. P.	53936	Mil.
	P.R.R.	286776	R.I.	56	—	67072	—
				57	B. & O.	78340	R.I.
				58	P.M.	32561	—
12	B. & O.	92379	Mil.	59	K.C.F.I. & N.	56159	R.I.
	C.R.I. & M.	350072	R.I.	60	C. & E.I.	670	—
	Ill. Cent.	22004	—	61	C.G.W.	15912	C.G.W.
	B. & O.	82031	C.G.W.	62	C. & E.I.	9880	Mil.
	C.R.I. & P.	16207	R.I.	63	C.G.W.	50546	C.G.W.
				64	C.R.I. & P.	52815	R.I.
				65	C.I. & L.	14018	Mil.
13	C.M. & St. P.	74156	Mil.	66	C. & O.	11345	—
	L.V.	72379	R.I.	67	Erie	5768	—
	C.M. & St. P.	54604	Mil.	68	—	7910	—
	Erie	77362	R.I.	69	C.C.C. & St. L.	16168	—
	C. & N.W.	71223	C. & N.W.	70			
	C.M. & St. P.	23360	Mil.	71			
	N.Y.C. St. L.	16289	C.G.W.	72			
	C.M. & St. P.	67876	Mil.	73			
	T.C.S. & D.	19915	R.I.	74	17 St. L. & S.F.	13730	R.I.
	C.C.C. & St. L.	43052	—	75	C. & O.	3733	—
	C. & O.	9627	—	76	C.R.I. & P.	60433	—
	L. & N.	11528	—	77	L.V.	71012	—
	Erie	86078	—	78	B. & O.	84325	Mil.
	E. & T.H.	3195	Mil.	79	C.R.I. & P.	51405	R.I.
				80	St. L. & S.F.	13526	—
				81			
14	C.B. & Q.	21255	Mil.	82			
	C.M. & St. P.	39826	—	83	19 C.G.W.	40172	C.G.W.
	C.R.I. & P.	90340	R.I.	84	C.R.I. & P.	51202	R.I.
	C.R.I. & M.	350331	—	85	C.O. & G.	4337	—
	B. & M.R.	8856	C.G.W.	86	C.M. & St. P.	56578	Mil.
	St. L. & S.F.	60398	R.I.	87	C. & O.	4030	R.I.
	M.K.T.	7141	C.G.W.	88	C.M. & St. P.	57440	Mil.
	—	15285	—	89	C.O. & G.	10524	R.I.
	C.B. & Q.	27497	—	90	20 P.M.	16172	Mil.
	St. L. B. & M.	1039	—	91	C.M. & St. P.	58432	—
	C.G.W.	2942	—	92	—	24216	—
	—	2150	—	93	St. J.G.I.	812	R.I.
	C.M. & St. P.	21320	C.M. & St. P.	94	Southern	12832	—
	C.B. & Q.	33860	C.G.W.	95	C.M. & St. P.	48620	Mil.
	—	18906	—	96	—	54254	—

Correct:

Correct:

Agent R

Agent R

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS.

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

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UNION PACIFIC RAILROAD COMPANY.

Inter. **PER DIEM RECLAIM STATEMENT.**

Statement of Cars Switched by Union Pacific Railroad Company for B & M R Ry
 at Omaha Station, Month of December 1905

Arbitrary Time Allowance

Days.

21	W. Y. O. & W.	848	Mil.	49	C. M. & St. P.	75066	Mil.
	C. G. W.	46070	C. G. W.	50	—	35684	—
	Mo. P.	20947	Mo. P.	51			
	C. N. & T. P.	4970	R. I.	52			
	C. M. & St. P.	60704	Mil.	53	28	Wab.	51913
				54		C. M. & St. P.	23988
				55		—	70886
22	C. C. L.	136	R. I.	56		K. C. F. I. & M.	61333
	St. L. & S. F.	60255	—	57		M. K. T.	3284
	—	60298	—	58		C. M. & St. P.	52226
	C. R. I. & P.	2160	Mil.	59		C. O. & G.	1076
	C. G. W.	2189	C. G. W.	60	29	L. S. & M. S.	44461
	N. Y. C. H. R.	93540	—	61		C. M. & St. P.	48109
	P. B. & L. E.	1073	R. I.	62		K. C. F. I. & M.	61049
	C. R. I. & P.	51612	—	63		C. M. & St. P.	55456
	P. & R.	59336	Mil.	64		C. G. W.	12792
				65		C. M. & St. P.	53306
				66		—	5912
23	C. G. W.	14468	C. G. W.	67			
	—	14244	—	68			
	C. M. & St. P.	63902	Mil.	69	30	C. & N. W.	69494
	P. C. O.	53240	—	70		C. & E. I.	2855
		17516	—	71		St. L. & S. F.	54126
				72		No. Pac.	37789
24	C. R. R. L. N. J.	34057	R. I.	73		C. G. W.	42123
	St. L. & S. F.	51496	—	74		C. & N. W.	49589
				75		C. O. & G.	10661
				76			
25	St. L. & S. F.	71322	R. I.	77			
				78	31	C. M. & St. P.	20182
				79			Mil.
26	C. R. I. & P.	6498	R. I.	80			
	C. & E. I.	1023	—	81			
	C. M. & St. P.	29078	Mil.	82			
	C. & N. W.	58534	C. & N. W.	83			
	C. M. & St. P.	61368	Mil.	84			
	C. B. & O.	96270	—	85			
	K. C. F. I. & M.	61123	R. I.	86			
	C. R. I. & P.	86178	—	87			
	L. & N.	27413	—	88			
	C. M. & St. P.	26063	Mil.	89			
	—	45986	—	90			
				91			
				92			
27	C. R. I. & P.	2207	R. I.	93			
	C. G. W.	42042	C. G. W.	94			
				95			
				96			

Correct: **Endorsed: Filed Jan 24 1907** Correct:

Geo. H. Thummel, Clerk.

Agent R

Agent R

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS.

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory.

In order to follow out this rule, all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

Inter

PER DIEM RECLAIM STATEMENT. By Union Pacific Railroad Company

Statement of Cars Switched ⁴for O. B. T. Co. R Yat Omaha Station, Month of December 190 5

Arbitrary Time Allowance _____ Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard
1	4	C. & N.W.	64864	C. & N.W.		49		Ill. Cent.	24093	C.G.W.	
2						50		—	24093	—	
3						51		—	12741	—	
4	6	Ill. Cent.	16364	R.I.		52		—	13167	—	
5						53		—	19715	—	
6						54		—	21982	—	
7	8	C.M. & St.P.	39488	Mil.		55		—	11129	—	
8						56		—	13553	—	
9						57		—	13541	—	
10	11	Ill. Cent.	37448	C.G.W.		58		—	26967	—	
11		—	45875	—		59		—			
12		—	35834	—		60		—			
13		—	37437	—		61	21	F.S. & W.	5520	R.I.	
14		—	34564	—		62		—			
15						63		—			
16	12	L.S. & M.S.	46637	C.G.W.		64	22	I.M. & S.	10071	M.O.P.	
17		P.R.R.	75792	—		65		—			
18		N.C.St.L.	10410	—		66		—			
19		W. & L.E.	21029	—		67	27	C.B. & Q.	93355	B. & M.R.	
20		N.Y.C.St.L.	13992	—		68		C.G.W.	15772	C.G.W.	
21		L.S. & M.S.	44596	—		69		T. & P.	2891	R.I.	
22		L.V.	74224	—		70		—			
23		B. & O.	58992	—		71		—			
24		L.S. & M.S.	42794	—		72	30	C.B. & Q.	23590	B. & M.R.	
25		Ill. Cent.	35043	—		73		—			
26		—	46357	—		74		—			
27		—	39826	—		75	31	C.B. & Q.	95394	B. & M.R.	
28		E. & T.H.	9362	R.I.		76		—			
29						77		—			
30						78		—			
31						79		—			
32	14	Ill. Cent.	33782	C.G.W.		80		—			
33		C. & N.W.	65614	C. & N.W.		81		—			
34						82		—			
35						83		—			
36	15	Ill. Cent.	11903	C.G.W.		84		—			
37		—	17616	—		85		—			
38		—	22228	—		86		—			
39		—	35447	—		87		—			
40		—	46175	—		88		—			
41		—	8410	—		89		—			
42		Gn.	36702	—		90		—			
43		Ill. Cent.	21861	—		91		—			
44		—	45426	—		92		—			
45						93		—			
46						94		—			
47	16	Ill. Cent.	23243	C.G.W.		95		—			
48						96		—			
TOTAL											

Correct: Endorsed: Filed Jan 24 1907 Correct:

Geo. H. Thummel, Clerk.

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 6 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

In order to follow out this rule all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

bit 40 UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for Mo. Pac. Ryat Omaha Station, Month of December 190 5

Arbitrary Time Allowance _____ Days.

Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
1	C.M. & St. P. C.G.W. C.R.I. & P.	51058 10332 85348	Mil. C.G.W. R.I.		49	7	C.M. & St. P. C. & N.W. C.M. & St. P.	54864 9578 37818	Mil. C. & N.W. Mil.	
					50					
					51					
					52					
					53		C. & E.I.	73274	R.I.	
2	P.R.R. C.M. & St. P. C.R.I. & P. C.M. & St. P. Mo. P.	425503 58950 57197 49148 18145	Mil. _____ R.I. Mil. Mil.		54		C.M. & St. P.	56718	Mil.	
					55			48532	____	
					56			64686	____	
					57			27976	____	
					58			74204	____	
					59			69916	____	
					60					
					61					
					62					
					63	8	C.M. & St. P. C. & N.W.	50576 68556	Mil. C. & N.W.	
					64		C.M. & St. P.	51344	Mil.	
					65		N. & W.	21890	____	
3	C.M. & St. P. Mo. P. Ill. Cent. Mo. P. I.M. & S. C.M. & St. P.	58152 2765 67273 23039 6193 19744	Mil. Mil. _____ _____ _____ ____		66		C.R.I. & P.	80052	R.I.	
					67		C.M. & St. P.	63944	Mil.	
					68			54696	____	
					69		C.B. & Q.	93270	B. & M.R.	
					70		C.R.I.E.P.	250074	R.I.	
					71		C.M. & St. P.	14608	Mil.	
					72					
					73					
4	I.M. & S. Ill. Cent. B.C.R. & N. C.R.I. & P. L.E. & W. C.M. & St. P.	15126 38968 5077 7565 8326 75054	Mil. O.B.T. R.I. _____ Mil. ____		74	9	C.M. & St. P.	70968	Mil.	
					75			60622	____	
					76			55254	____	
					77		Wab.	25257	____	
					78		C.M. & St. P.	71000	____	
					79					
					80					
5	C.O. & G. C.G.W. C.R.I. & M. St. L.S.W. C. & N.W. C.R.I. & P.	4382 17646 350476 8193 8064 51648	R.I. C.G.W. R.I. _____ C. & N.W. R.I.		81	10	E. & T.H.	3041	R.I.	
					82		W.C.	10428	Mil.	
					83		C.M. & St. P.	57508	____	
					84		Mo. P.	60026	____	
					85		C.R.I. & P.	11405	R.I.	
					86		No. Pac.	13361	Mil.	
					87		C.M. & St. P.	52020	____	
					88					
					89					
6	C.R.I. & P. R.G.W. C.M. & St. P. _____ C.R.I. & P. C.M. & St. P.	55216 1794 73210 51782 3964 73952	R.I. Mil. _____ _____ R.I. Mil.		90	11	C.R.I. & P.	56513	R.I.	
					91					
					92					
					93	12	C.M. & St. P.	14454	Mil.	
					94		C.R.I.M.	350463	R.I.	
					95		K.C.F.I. & M.	17598	____	
					96		C.M. & St. P.	41364	Mil.	
TOTAL										

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE

NO. 6 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

In order to follow out this rule all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

PER DIEM RECLAIM STATEMENT.

Inter

Statement of Cars Switched by Union Pacific Railroad Company for Mo Pac R Yat Omaha Station, Month of December 190 5

Arbitrary Time Allowance _____ Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard
1	12	C.R.I. & P.	66866	R.I.		49	24	C.O. & G.	2391	R.I.	
2						50		C.R.I.E.P.	250107	—	
3						51		Mo.P.	26232	Mil.	
4	13	C.M. & St.P.	74812	Mil.		52					
5		P.R.R.	99280	R.I.		53					
6		C.M. & St.P.	51612	Mil.		54	25	I.M. & S.	4983	Mil.	
7		—	42880	—		55		C.I. & L.	17616	C.G.W.	
8		—	4100	—		56	26	L. & N.	27413	R.I.	
9						57		C.R.I.E.P.	265109	—	
10						58		C.M. & St.P.	5744	Mil.	
11	14	B.C.R. & N.	9264	R.I.		59		C. & N.W.	39400	C.G.W.	
12		C.M. & St.P.	28813	Mil.		60		Ill. Cent.	11542	—	
13						61					
14						62					
15	16	Mo.P.	30523	C.G.W.		63	27	Mo.P.	3003	Mil.	
16		Ill. Cent.	2917	R.I.		64		C.M. & St.P.	50200	—	
17		C.R.I. & P.	18487	—		65					
18						66					
19						67	28	Mo. P.	13568	Mil.	
20	17	C.R.I. & P.	50016	R.I.		68		C.R.I. & P.	51604	R.I.	
21		C.M. & St.P.	41908	Mil.		69		—	66186	—	
22		—	58546	—		70					
23		—	6750	—		71					
24		B.C.R. & N.	10253	R.I.		72	29	C.M. & St.P.	7967	Mil.	
25						73		C.G.W.	12140	C.G.W.	
26						74					
27	18	C.M. & St.P.	40458	Mil.		75					
28		C.R.I. & P.	3961	R.I.		76	30	C.M. & St.P.	23224	Mil.	
29		C.O. & G.	3610	—		77		C. & E.I.	6988	R.I.	
30						78		C. & N.W.	37450	C. & N.W.	
31						79		K.C.F.I. & M.	21138	R.I.	
32	19	C.R.I.E.P.	265242	R.I.		80		C. & N.W.	59196	C. & N.W.	
33						81		—	65535	—	
34						82					
35	20	C.R.I. & P.	76755	R.I.		83					
36						84	31	C.M. & St.P.	24324	C.G.W.	
37						85					
38	21	C.M. & St.P.	51958	Mil.		86					
39						87					
40						88					
41	22	C.M. & St.P.	52060	Mil.		89					
42		I.M. & S.	4983	—		90					
43		—	16328	—		91					
44						92					
45						93					
46	23	C.M. & St.P.	34324	C.G.W.		94					
47						95					
48						96					

Correct: Endorsed: Filed Jan 24 1907 Correct:

Geo. H. Thummel, Clerk.

Agent

R

Agent

R

(SEE OTHER SIDE FOR INSTRUCTIONS.)

CHECK 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE

NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

In order to follow out this rule, all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

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Exhibit 41 UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

 Statement of Cars Switched by Union Pacific Railroad Company for Mo. Pac. Ry

 803 at Omaha Station, Month of November 1905

Arbitrary Time Allowance

Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
1	1	C.M. & St. P.	62682	Mil.		49		C.M. & St. P.	8650	Mil.	
2		C.R.I. & P.	5781	R.I.		50					
3		C.G.W.	7216	C.G.W.		51					
4		—	12228	—		52	6	C.O. & G.	11318	R.I.	
5		—	15170	—		53					
6		C.St.P.K.C.	9084	—		54					
7		A.T. & S.F.	16264	Mil.		55	7	Wab.	63572	O.B.T.	
8		C.M. & St. P.	71794	—		56		I.M. & S.	4703	Mil.	
9		—	50240	—		57		Wab.	24248	—	
10		—	44748	—		58		—	23077	—	
11		C.R.I. & P.	56170	R.I.		59		C.M. & St. P.	75126	—	
12		C.S.	5532	—		60		C.G.W.	17374	C.G.W.	
13						61					
14						62					
15	2	B. & O.	68227	R.I.		63	8	C.M. & St. P.	18870	Mil.	
16		C.G.W.	14672	C.G.W.		64		C.R.I. & T.	150116	R.I.	
17		A. & B.	3017	Mil.		65		C.M. & St. P.	22036	Mil.	
18		I.M. & S.	15940	—		66		—	51150	—	
19		F.S. & W.	32017	C.G.W.		67		—	52046	—	
20		C.M. & St. P.	40924	Mil.		68		—	59312	—	
21		—	23964	—		69		St. L. V.	182	—	
22		—	50330	—		70		C.M. & St. P.	52726	—	
23		C.R.I. & P.	54347	R.I.		71		—	30622	—	
24		C.M. & St. P.	55804	Mil.		72					
25		C.M. & St. P.	51794	—		73					
26		—	20806	—		74	9	C.M. & St. P.	63548	Mil.	
27		—	63378	—		75		—	56002	—	
28						76		C.G.W.	18010	C.G.W.	
29						77					
30	3	C.R.I. & M.	350596	R.I.		78					
31		C.P. & St. L.	1710	—		79	10	C.G.W.	12582	C.G.W.	
32		B.C.R. & N.	9778	—		80		C.M. & St. P.	34394	C.M. & St. P.	
33						81		Wab.	23019	—	
34						82		—	24388	—	
35	4	C.M. & St. P.	21424	Mil.		83		P.F.W. & C.	7384	R.I.	
36		B.C.N. & N.	9778	R.I.		84		C.M. & St. P.	66244	Mil.	
37		C.M. & St. P.	73330	Mil.		85		—	48318	—	
38		Ill. Cent.	94048	O.B.T.		86		St. L. & S.F.	40688	C.G.W.	
39		C.M. & St. P.	47204	Mil.		87		C.N. & T.P.	6680	Mil.	
40		—	49648	—		88		K.C.S.	11145	C.G.W.	
41						89		P.M.	42854	—	
42						90		St. L. & S.F.	12081	—	
43	5	C.M. & St. P.	68894	Mil.		91		Mo. P.	33733	—	
44		—	38490	—		92		T. & P.	10078	—	
45		—	66514	—		93		C. & E.I.	60762	Mil.	
46		I.M. & S.	12782	—		94		C.M. & St. P.	41212	—	
47		B.C.R. & N.	7692	R.I.		95					
48		C.M. & St. P.	67624	Mil.		96					
TOTAL											

Correct:

Correct:

Agent

R

Agent

R

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory.

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UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for Mo. Pac. Ry _____807 at Omaha Station, Month of November 1905

Arbitrary Time Allowance _____ Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
1	11	C.M. & St.P.	24266	Mil.		49	16	St.L. & S.F.	19298	Mil.	
2		C.B. & Q.	20812	R.I.		50		S.I.	813	R.I.	
3		C.R.I. & P.	53302	—		51		Mo.P.	29225	Mil.	
4		—	5381	—		52		L.E. & W.	5419	C.G.W.	
5		C.M. & St.P.	43128	Mil.		53		—	—	—	
6		G.R.I. & P.	2109	R.I.		54		—	—	—	
7		MOP	15333	C.G.W.		55	17	C.M. & St.P.	37060	Mil.	
8		C.M. & St.P.	22066	Mil.		56		—	21424	—	
9		C.R.I. & P.	4745	R.I.		57		—	68122	—	
10		—	—	—		58		—	—	—	
11		—	—	—		59		—	—	—	
12	12	Mo. P.	30687	C.G.W.		60	18	T. & P.	13190	C.G.W.	
13		—	23472	Mil.		61		Mo. P.	33842	—	
14		—	23265	—		62		St.L. & S.F.	13136	—	
15		C.M. & St.P.	75014	—		63		B. & O.	165184	—	
16		St.L. & S.F.	45310	R.I.		64		C.N.O.T.P.	6680	Mil.	
17		C.R.I. & P.	6476	—		65		C.M. & St.P.	55078	—	
18		Wab.	23077	Mil.		66		—	67668	—	
19		—	24248	—		67		M. & O.	7894	M. & O.	
20		—	—	—		68		C.R.I. & P.	57765	R.I.	
21		—	—	—		69		C.R.I. & T.	150672	—	
22	13	C.O. & G.	1889	C.G.W.		70		C.R.I. & P.	52223	—	
23		C.R.I. & P.	61709	R.I.		71		C.B. & Q.	19497	B. & M.R.	
24		C.M. & St.P.	36770	Mil.		72		C.R.I. & P.	4033	R.I.	
25		—	49830	—		73		—	51815	—	
26		C. & E.I.	35629	R.I.		74		C. & E.I.	3482	—	
27		C.M. & St.P.	21424	Mil.		75		C.M. & St.P.	38562	Mil.	
28		St.L. & S.F.	12016	B. & M.R.		76		C.R.I. & M.	350022	R.I.	
29		C.R.I. & P.	53523	R.I.		77		C.M. & St.P.	50018	Mil.	
30		—	54547	—		78		C.R.I. & P.	6522	R.I.	
31		—	—	—		79		B.C.R. & N.	10228	—	
32		—	—	—		80		C.R.I. & P.	57221	—	
33	14	S.I.	1418	R.I.		81		C.M. & St.P.	60384	Mil.	
34		L.E. & W.	5419	C.G.W.		82		C.R.I. & P.	6539	R.I.	
35		C.R.I. & E.P.	250060	R.I.		83		—	53910	—	
36		C.M. & St.P.	13240	Mil.		84		C.M. & St.P.	51134	Mil.	
37		—	33676	—		85		—	55352	—	
38		—	64610	—		86		—	—	—	
39		C.O. & G.	11415	R.I.		87		—	—	—	
40		L. & N.	9425	Mil.		88	19	S.I.	1079	R.I.	
41		—	—	—		89		St.L. & S.F.	19298	Mil.	
42		—	—	—		90		—	—	—	
43	15	M. & O.	12146	M. & O.		91		—	—	—	
44		C.M. & St.P.	43356	Mil.		92	20	Mo. P.	9712	Mil.	
45		—	40982	—		93		C. & O.	2076	C.G.W.	
46		—	65816	—		94	21	A.T. & S.F.	29683	R.I.	
47		—	—	—		95		C.R.I. & P.	66263	—	
48		—	—	—		96		C.M. & St.P.	62758	Mil.	
TOTAL											

Correct:

Correct:

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

**AMERICAN RAILWAY ASSOCIATION PER DIEM RULE
NO. 5 READS.**

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

In order to follow out this rule, all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for Mo. Pac. Ry

808 at Omaha Station, Month of November 1905

Arbitrary Time Allowance

Days.

CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
1	22	O.O. & K.C.	1706	B. & M.R.		49	28	C.R.I. & P.	15808	R.I.	
2		C.M. & St.P.	41158	Mil.		50		C. & St.P.	31842	Mil.	
3		---	47764	---		51		Rutland	5017	R.I.	
4		---	36384	---		52		C.M. & St.P.	66676	Mil.	
5		---	15856	---		53		---	8678	---	
6		C.R.I. & P.	61163	R.I.		54		C.O. & G.	10583	R.I.	
7		S.I.	1664	---		55		---	---	---	
8		Ill. Cent.	92430	Mil.		56		---	---	---	
9		C. & N.W.	84496	C. & N.W.		57	29	C.O. & G.	3676	R.I.	
10		---	---	---		58		C.M. & St.P.	61042	Mil.	
11		---	---	---		59		---	---	---	
12	23	Mo. P.	16805	C.G.W.		60		---	---	---	
13		C.M. & St.P.	17742	Mil.		61		Mo. P.	24425	Mil.	
14		---	34690	---		62		C.M. & St.P.	51610	---	
15		C.G.W.	15578	C.G.W.		63		P.R.R.	9903	---	
16		C.M. & St.P.	59520	Mil.		64		Ill. Cent.	67273	---	
17		---	---	---		65		Mo. P.	23039	---	
18		---	---	---		66		I.M. & S.	6193	---	
19	24	C.M. & St.P.	50974	Mil.		67		---	---	---	
20		P.R.R.	119947	---		68		---	---	---	
21		C.M. & St.P.	63142	---		69		---	---	---	
22		L.E. & W.	5419	C.G.W.		70		---	---	---	
23		C.M. & St.P.	73268	Mil.		71		---	---	---	
24		---	68306	---		72		---	---	---	
25		---	9976	---		73		---	---	---	
26		---	60898	---		74		---	---	---	
27		Mo. P.	24425	---		75		---	---	---	
28		C. & N.W.	57968	C. & N.W.		76		---	---	---	
29		Wab.	68135	O.B.T.		77		---	---	---	
30		C.R.I. & P.	50219	R.I.		78		---	---	---	
31		C.M. & St.P.	38696	Mil.		79		---	---	---	
32		Wab.	66077	R.I.		80		---	---	---	
33		---	---	---		81		---	---	---	
34		---	---	---		82		---	---	---	
35	25	C.G.W.	13172	C.G.W.		83		---	---	---	
36		C.O. & G.	9168	R.I.		84		---	---	---	
37		C.R.I. & P.	5630	---		85		---	---	---	
38		---	---	---		86		---	---	---	
39		---	---	---		87		---	---	---	
40	26	C.M. & St.P.	52358	Mil.		88		---	---	---	
41		---	32902	---		89		---	---	---	
42		---	50760	---		90		---	---	---	
43		---	---	---		91		---	---	---	
44		---	---	---		92		---	---	---	
45	27	C.M. & St.P.	73144	Mil.		93		---	---	---	
46		---	45066	---		94		---	---	---	
47		---	69000	---		95		---	---	---	
48		---	---	---		96		---	---	---	
TOTAL											

Correct: Endorsed: Filed Jan 24 1907 Correct:

Geo. H. Thummel, Clerk.

Agent _____ R _____

Agent _____ R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory.

In order to follow out this rule, all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

ibit 42 UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

 Statement of Cars Switched by Union Pacific Railroad Company for Mo. Pac. Ry

 at Omaha Station, Month of October 1905

Arbitrary Time Allowance _____ Days.

Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
1	I.M. & S. C.M. & St. P. C. & N.W. — — C.R.I. & P.	19435 73854 5044 85538 68676 61436	Mil. — C. & N.W. — — R.I.		49	8	C.M. & St. P. — C.O. & G. C.M. & St. P. M. & O. B.C.R. & N. M.K.T.	59166 67090 2022 43896 14908 13550 10648	Mil. — R.I. Mil. M. & O. R.I. Mil.	
2	St. L. V. C.M. & St. P. St. L. S. W. C. & N.W. C.G.W. — C.St. P. K.C.	200 75266 5431 45608 18082 8150 9498	Mil. — B. & M.R. C. & N.W. C.G.W. — —		50 51 52 53 54 55 56 57	10	C.R.I. & M. C.M. & St. P. C. & N.W. C.M. & St. P. C. & N.W. C.M. & St. P. — C.G.W. C.R.I. & P.	350432 30659 77630 46968 94888 37352 75176 43806 12918 3939	R.I. Mil. C. & N.W. Mil. C. & N.W. Mil. — C.G.W. R.I.	
3	Mo. P. I.M. & S. Ia. Cent. C.M. & St. P. S.I.	11779 1543 04606 33670 1027	Mil. — C.G.W. Mil. R.I.		58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79	11	C.M. & St. P. S.I. C. & E.I. C.M. & St. P. — — — C.G.W.	19066 1695 12414 56862 24586 36688 32850 12150	Mil. R.I. — Mil. — — — C.G.W.	
4	A. & B. I.M. & S. — Mo. P.	3017 10864 2233 23472	Mil. — — —		80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96	13	C.M. & St. P. — M.K.T. C.M. & St. P. C.R.I. & P. B.C.R. & N. C.R.I. & P. C.M. & St. P. G.T.	65068 58568 7376 9938 56602 5860 4701 35484 11087	Mil. — R.I. Mil. R.I. — — Mil. R.I.	
5	C.B. & Q.	25921	B. & M.R.			14	C.R.I. & P. Mo. P.	9103 13389	R.I. Mil.	
6	C. & N.W. B.C.R. & N. Mo. P. — C.B. Ry. I.M. & S. Mo. P.	36762 10448 27326 26997 2195 8741 21040	C. & N.W. R.I. Mil. — — — —			15	C.M. & St. P.	38728 3898	Mil.	
7	C. & N.W. C.M. & St. P. C. & N.W. G.N. P.R.R.	61200 68032 82284 32190 101565	C. & N.W. Mil. C. & N.W. Mil. —							
TOTAL										

Correct:

Correct:

Agent

R

Agent

R

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 6 READS,

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

In order to follow out this rule all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for Mo. Pac. Ryat Omaha Station, Month of October 190 5

Arbitrary Time Allowance _____ Days.

Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
16	C.M. & St. P. L.S. & M.S. C.R.I. & P.	41262 1610 61328	Mil. R.I. —		49 50 51 52 53 54 55	23	N.C.R. I.M. & S. Mo. P. S.I.	6408 10060 30253 1581	R.I. C.G.W. Mil. R.I.	
17	C.R.I. & P. St. L. & S.F. I.M. & S. C.B. & Q. I.M. & S. St. L. & S.F. G.B. & W. St. L. S.W. C.O. & G. C.M. & St. P.	61795 7796 14899 42343 14053 31035 1732 20984 11173 42420	R.I. C.G.W. — — — Mil. R.I. — Mil.		56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96	24	C.R.I. & P. B.C.R. & N. I.M. & S. — F.T.W. & R.G. C.R. C.M. & St. P. C.G.W.	51465 13026 15646 1546 32017 8020 34562 890	R.I. C.G.W. Mil. — C.G.W. R.I. Mil. C.G.W.	
18	T. & P. C.M. & St. P. St. L. & S.F. — L.S. & M.S. C.O. & G. C.M. & St. P.	8002 41864 34422 34559 44237 1904 69162	C.G.W. Mil. C.G.W. — — — —		76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96	25	C.R.I. & P. C.M. & St. P. C.R.I. & P. C.M. & St. P.	80228 38224 50203 38992	R.I. Mil. R.I. Mil.	
19	Mo. P. C. & N.W. C.M. & St. P. C.R.I. & P. C.R.I. & T.	9343 61216 60740 2217 150743	Mil. C. & N.W. Mil. R.I. R.I.		82 83 84 85 86 87 88 89 90 91 92 93 94 95 96	26	C.G.W. — W.C. M.C. C. & N.W. Mo. P. C.G.W. S.I.	14470 7156 15618 42971 47748 29416 15514 755	C.G.W. — — — Mil. — C.G.W. R.I.	
20	C.R.I. & P. C.M. & St. P. —	54744 12544 73660	C.G.W. Mil. —		82 83 84 85 86 87 88 89 90 91 92 93 94 95 96	27	C.M. & St. P. C.H. & D. Mob. & Ohio C.G.W. C.M. & St. P. I.M. & S. — Mo. P. A. & B. C.B. & Q.	36160 1149 8087 13202 23962 10864 2233 23472 3017 27781	Mil. R.I. C.G.W. — Mil. — — — B. & M.R.	
21	C.R.I. & P. M.C. T.H. & I. C.M. & St. P.	55263 14752 808 54412	R.I. R.I. — Mil.		82 83 84 85 86 87 88 89 90 91 92 93 94 95 96	28	C.G.W. C.M. & St. P.	50356 52954 63218	C.G.W. Mil. —	
22	C. & N.W. I.M. & S. D.R. & N.W. C.R.I. & T.	76652 19233 20 150591	C.G.W. Mil. R.I. —							
TOTAL										

Correct:

Correct:

Agent _____

R _____

Agent _____

R _____

(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 5 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

In order to follow out this rule all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

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UNION PACIFIC RAILROAD COMPANY.

PER DIEM RECLAIM STATEMENT.

Inter

Statement of Cars Switched by Union Pacific Railroad Company for Mo Pac R y
 at Omaha Station, Month of October 1905
 Arbitrary Time Allowance _____ Days.

Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard
28	Mo. P.	17477	Mil.		49					
		9343	—		50					
	C.M. & St. P.	57930	—		51					
		70358	—		52					
	I.M. & S.	15940	—		53					
	C.M. & St. P.	72684	—		54					
		41864	—		55					
					56					
					57					
29	C.M. & St. P.	33682	Mil.		58					
	C.G.W.	7186	C.G.W.		59					
	Mo. P.	22129	Mil.		60					
					61					
					62					
30	Mo. P.	23472	Mil.		63					
		23265	—		64					
	A. & B.	3017	—		65					
	C.M. & St. P.	29222	—		66					
		62664	—		67					
	C.O. & G.	11560	R.I.		68					
	B.C.R. & N.	7262	—		69					
		13026	C.G.W.		70					
					71					
					72					
31	C.M. & St. P.	60190	Mil.		73					
	I.D. & W.	12238	—		74					
	C.R.I. & P.	85633	R.I.		75					
	St. L. & S.F.	32427	—		76					
	C.M. & St. P.	57190	Mil.		77					
	Mo. P.	22678	Mil.		78					
	Wab.	68021	Wab.		79					
	C.M. & St. P.	70596	Mil.		80					
	C.R.I. & P.	51672	R.I.		81					
	C.M. & St. P.	18838	Mil.		82					
					83					
					84					
					85					
					86					
					86					
					87					
					88					
					89					
					90					
					91					
					92					
					93					
					94					
					95					
					96					

Correct: Endorsed: Filed Jan 24 1907 Correct:

Geo. H. Thummel, Clerk.

Agent _____ R _____ Agent _____ R _____

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 6 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

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Exhibit 43 UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for Mo. Pac. Ry812 at Omaha Station, Month of September 1905

Arbitrary Time Allowance _____ Days.

Arbitrary Time Allowance											
CHECK	Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
1	1	W.C.	16018	R.I.		49	6	C.G.W.	1386	C.G.W.	
2		C.R.I. & T.	150646	---		50		---	16978	---	
3		C.G.W.	3020	C.G.W.		51		G.T.	28227	---	
4		---	1626	---		52		C.G.W.	9922	---	
5		C.R.I. & P.	52317	R.I.		53		Erie	85311	---	
6		C.G.W.	14816	C.G.W.		54		C.St.P.K.C.	2786	---	
7		---	13920	---		55		C.G.W.	150	---	
8						56		G.N.	36716	---	
9						57		C.M. & St.P.	41048	Mil.	
0	2	C.G.W.	482	C.G.W.		58		---	74552	---	
1		---	3778	---		59		Mo. P.	16098	C.G.W.	
2		---	1786	---		60		---	8868	---	
3		---	13012	---		61		C.R.I. & P.	6173	---	
4		---	12418	---		62		R.G.W.	2001	---	
5		---	15142	---		63		T. & P.	12781	---	
6						64		B. & O.	8444	---	
7						65		C. & A.	14937	---	
8	3	Mo. P.	27529	---		66		T. & P.	11114	---	
9		C.M. & St.P.	67850	Mil.		67		Mo. P.	20714	---	
0		C. & N.W.	65686	C. & N.W.		68		---	25204	---	
1		I.M. & S.	13593	C.G.W.		69		C. & N.W.	8636	---	
2		K.C.S.	12755	---		70		C.R.I. & P.	54141	R.I.	
3		C. & A.	14937	---		71		C. & N.W.	66627	C. & N.W.	
4		B. & O.	34421	---		72		C.G.W.	17164	C.G.W.	
5		P.R.R.	99133	---		73		---	11668	---	
6		S.P.	69467	---		74		---	17754	---	
7						75		---	12136	---	
8						76		---	13922	---	
9	4	C.R.I. & P.	57140	R.I.		77		L.V.	64797	R.I.	
0		A.T. & S.F.	17734	C.G.W.		78		Ill. Cent.	11028	---	
1		Mo. P.	21003	---		79		---	---	---	
2		L. & N.	11175	---		80		---	---	---	
3		T. & P.	13049	---		81	7	M. & St.L.	5210	C.G.W.	
4		C. & N.W.	13351	---		82		Mo. P.	28765	---	
5		T. & P.	5939	---		83		T. & P.	8184	---	
6		D. & R.G.	61431	---		84		Mo. P.	25707	---	
7		M.K.T.	9124	R.I.		85		C.R.I. & P.	61069	---	
8		C.R.I. & P.	54437	R.I.		86		T. & P.	11254	---	
9		C. & N.W.	34870	C. & N.W.		87		---	8791	---	
0						88		---	5572	---	
1						89		Mo. P.	22893	---	
2	5	C.M. & St.P.	49118	Mil.		90		C.G.W.	15246	---	
3		C.R.I. & P.	56188	R.I.		91		---	1550	---	
4		C.St.P.K.C.	8384	C.G.W.		92		---	13922	---	
5		C.R.I. & P.	54437	R.I.		93		---	12136	---	
6						94		---	17754	---	
7						95		---	11668	---	
8						96		---	17164	---	
9											
0											
1											
2											
3											
4											
5											
6											
7											
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INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE NO. 6 READS:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

In order to follow out this rule all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

UNION PACIFIC RAILROAD COMPANY.

Inter.

PER DIEM RECLAIM STATEMENT.

Statement of Cars Switched by Union Pacific Railroad Company for Mo. Pac. Ry3 at Omaha Station, Month of September 190 5

Arbitrary Time Allowance _____ Days.

Date Rec'd	INITIALS	NUMBERS	CONTENTS	Actual Days in Yard	CHECK	Date Rec'd	INITIALS	NUMBER	CONTENTS	Actual Days in Yard
7	C.M. & St.P. D. & O. C.G.W. — — —	43870 66680 1090 13202 10808 13382	Mil. R.I. C.G.W. — — —		49 50 51 52 53 54 55 56	13	C.M. & St.P. — St.L. & S.F. C.G.W. —	58368 70852 4046 13544	Mil. — R.I. C.G.W. —	
8	C.M. & St.P. — Mo. P. C. & N.W. St.L. & S.F. C.G.W.	49870 21162 26026 35174 8048 2918	Mil. — C.G.W. C. & N.W. C.G.W. —		57 58 59 60 61 62 63 64	14	C. & N.W. — C.M. & St.P. C. & N.W. C.R.I. & P. —	83742 76716 30324 83752 61219	C. & N.W. — Mil. C. & N.W. R.I. —	
9	M. & O. C. & N.W. A.T. & S.F. M. & O. P.R.R.	9072 58688 21594 18520 60661	M. & O. C. & N.W. B. & M.R. M. & O. R.I.		65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88	15	C.M. & St.P. — C.G.W. Erie C. & N.W. C.M. & St.P. — C.St.P.K.C. P.R.R. N.C. & St.L. C.G.W. — C. & St.P.K. —	58072 38928 1772 97523 66994 64800 46416 8862 83730 10500 282 14324 10280 11748	Mil. — C.G.W. Mil. C. & N.W. Mil. — C.G.W. — Mil. C.G.W. — — —	
10	C.M. & St.P. C. & N.W. I.M. & S. Mo. P. Mo. P.	33714 50214 18929 30152 18182	Mil. C.G.W. — — —		77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96	16	C.G.W. — C.M. & St.P. I.M. & S. C.M. & St.P. — I. & G.N. B.C.R. & N. —	16180 17628 47676 8471 56742 71894 2054 7725	C.G.W. — Mil. — — — R.I. — —	
11	C.R.I. & P. C.M. & St.P. I.M. & S. C.M. & St.P. T. & P. C.M. & St.P. C.R.I. & P. C.St.P.K.C. C.G.W. C.St.P.K.C. C.R.I. & P.	55125 56702 10422 51518 11315 24626 6914 11908 17362 8400 61016	R.I. Mil. C.G.W. Mil. C.G.W. Mil. R.I. C.G.W. — — R.I.		89 90 91 92 93 94 95 96	17	B. & O. V.S. & P. C.G.W. C. & E.I. C.M. & St.P. C.R.I. & P. —	75636 25459 16526 8185 34104 51641 61948	C.G.W. — — — R.I. Mil. R.I. —	
12	C.B. & O. C.N. & T.P. B.C.R. & N. C.M. & St.P.	41496 1132 13356 48346	C.G.W. — R.I. Mil.							
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(SEE OTHER SIDE FOR INSTRUCTIONS.)

INSTRUCTIONS.

AMERICAN RAILWAY ASSOCIATION PER DIEM RULE

NO. 6 READS.

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

In order to follow out this rule, all Agents where an arbitrary time is allowed in switching service will compile statement immediately after the close of each calendar month, showing cars switched for other railroad companies.

At all stations where a reclaim is allowed on interline switching, that is, on cars switched by this company from one road to another, separate reports of such switching must be made on this form.

This statement must be made in duplicate, checked and signed by station Agent, also by Agent of connecting line for whom switching was done, and both original and duplicate sent to Auditor of Equipment Service promptly at the close of each month; the Agent will retain an impression copy for his file.

Office Supreme Court, U. S.
FILED.

OCT 21 1911

JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1910: 1911.

No. 191. 31.

UNION PACIFIC RAILROAD COMPANY, A. L. MOHLER,
J. M. HENRY and HENRY SWAGTEK,
Appellants,

vs.

MASON CITY AND FORT DODGE RAILROAD COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT.

BRIEF OF APPELLANTS.

MAXWELL EVARTS,
N. H. LOOMIS,

Of Counsel for Appellants.



Supreme Court of the United States,

OCTOBER TERM, 1910. 1911.

No. 191. 31.

UNION PACIFIC RAILROAD COMPANY, A. L. MOHLER,
J. M. HENRY AND HENRY SWAGTEK,
APPELLANTS,

VS.

MASON CITY AND FORT DODGE RAILROAD
COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT.

BRIEF OF APPELLANTS.

Statement.

On July 25, 1866, Congress passed an act authorizing the building of railroad bridges across certain navigable rivers (14 U. S. Stats., 244; printed in full at page I of Appendix to this brief). It was provided in this act, with reference to a bridge across the Mississippi River at Quincy, Illinois (the provision being afterwards made applicable to all the bridges referred to in the act), as follows:

"All trains of all roads terminating at said river at or opposite said point shall be allowed to cross said bridge for reasonable compensation."

On February 24, 1871, Congress passed an act entitled, "An act to authorize the Union Pacific Railroad Company to issue its bonds to construct a bridge across the Missouri

River at Omaha, Nebraska, and Council Bluffs, Iowa" (16 U. S. Stats. 430; printed in full at page VI. of Appendix to this brief). This act of 1871 provided that the Union Pacific in building any bridge thereunder should be empowered, governed and limited, by the provisions of the Bridge Act of 1866. In pursuance of the authority conferred by the Act of 1871, the Union Pacific built a bridge across the Missouri River at Omaha, Nebraska.

In 1890, the Union Pacific entered into a certain contract with the Chicago, Rock Island and Pacific Railway Company, with reference to the use by the latter company of said Omaha bridge and its approaches. This contract gave to the Rock Island Company the full, equal and joint possession and use of the main and passing tracks of the Union Pacific then located and established, or which might thereafter be located and established, between the terminns of such tracks in the city of Council Bluffs, Iowa, and a line drawn at a right angle across said tracks within one and one-half miles southerly from the then passenger station at South Omaha, Nebraska, including the bridge across the Missouri River between Council Bluffs and Omaha.

This contract might perhaps not improperly be described as an "improvident" contract in that it was for the term of nine hundred and ninety-nine years with a stated rental to continue throughout such term.

Thereafter, a change of management in the Union Pacific took place, and as might have been expected, opposition developed to this somewhat extraordinary contract. Suit was brought by the Chicago, Rock Island and Pacific Railroad Company against the Union Pacific for the specific performance of this contract, and the litigation was carried to this Court.

The Rock Island Company was successful and a specific performance of the contract was decreed. The opinion of this Court in the case will be found in *Union Pacific Railway Com-*

pany vs. Chicago, Rock Island and Pacific Railway Company, 163 U. S., 564. One of the grounds of the decision was, that aside from any contract, the Bridge Acts above referred to of 1866 and 1871, imposed on the Union Pacific the duty of permitting the Rock Island to use such bridge and approaches. At page 586, this Court said :

“ The provisions of the Pacific Railroad acts relating to the bridge over the Missouri River, its construction and operation, imposed on the Pacific Company the duty of permitting the Rock Island Company to run its engines, cars and trains over the bridge and the tracks between Council Bluffs and Omaha, and we think that South Omaha was included.”

The theory advanced by this Court was that Congress had adopted the general policy that all railroad bridges across navigable rivers should be used upon reasonable terms by all railroads running to either end thereof whether owners of the bridge or not, and it gave a broad construction to the Bridge Acts of 1866 and 1871, because in its opinion,

“ the scheme of Congress was to accomplish the more perfect connection ‘ at or near Council Bluffs, Iowa, and Omaha, Nebraska,’ and we think this distance [4 miles] reasonably within the terms of the act of 1871, liberally construed, as the act should be ” (p. 588).

That is to say, this Court made the use of these tracks in South Omaha incident to and part of the use of the bridge, for the reason that in its opinion the Rock Island Company could not obtain an effective and complete and real use of the bridge, unless it had at the same time the use of the necessary approaches, and this Court regarded the tracks in South Omaha as part of the necessary approaches to the bridge. The Court naturally held that such tracks as were included in a contract between the Union Pacific and the Rock Island Company and

considered by them necessary approaches to the bridge were to be deemed proper approaches under the provisions of the Bridge Acts. There was, however, no intention on the part of the Court to give to the Rock Island Company the use of these approaches and tracks in South Omaha, except as an incident to the use of the bridge, and no suggestion in any way that the Rock Island Company could use the approaches apart from and unconnected with the crossing of the bridge. In fact it was said by Chief Justice FULLER in his opinion at page 588 that "*it would seem to be clear that the approaches on the west side, as well as on the east, must be regarded as part of the structure.*" For example, this Court never for a moment supposed that it was giving to a road connecting with the Union Pacific at South Omaha the right to switch a car coming from the west on to the Union Pacific tracks and deliver to another road from the west to be carried to destination without ever crossing the Missouri River Bridge. The right under the Bridge Acts was to use the South Omaha tracks as a means of getting to or from the Missouri River Bridge, and there was no other basis whatever for taking from the Union Pacific the complete ownership and control of its own tracks.

In 1902, and a short time prior to the construction and completion of the Mason City and Fort Dodge Railroad to a junction with the Union Pacific Railroad in Council Bluffs, Iowa, a request was made of the Union Pacific by the Mason City and Fort Dodge Railroad Company, the appellee herein, that the Union Pacific should permit it to enjoy the joint use of its tracks, bridge and approaches on equal terms with the Chicago, Rock Island and Pacific Railway Company under the contract of 1890 above referred to. This request was refused, and the Mason City and Fort Dodge Railroad Company thereupon, and on November 1, 1902, filed its bill of complaint in the United States Circuit Court, for the District of Nebraska, praying for a decree adjudging that it was entitled to be ad-

mitted to the full, equal and joint use with the Rock Island Company of the main and passing tracks of the Union Pacific Railroad then located or established or which might thereafter be located and established between the eastern terminus of the Union Pacific in the City of Council Bluffs, Iowa, and a line drawn at right angles across said tracks within one and one-half miles south of the passenger station of the Union Pacific at South Omaha, Nebraska, including the bridge over the Missouri River between Council Bluffs and Omaha.

The case was tried, and the prayer of the bill of complaint was granted. Thereafter the judgment below was affirmed by this Court in the case of *Union Pacific Railroad Company vs. Mason City and Fort Dodge Railroad Company*, 199 U. S., 160.

The decision of the *Mason City Case* was placed squarely upon the prior decision of this Court in the *Rock Island Case* reported in 163 U. S., 564. This Court did not undertake to enlarge or modify or alter the prior decision. The opinion in 199 U. S., 160, was based entirely upon the proposition that the Mason City Company had a right to the use of the tracks and approaches to the bridge as an incident and only as an incident to the use of the bridge. That is to say, this Court did not undertake to say that the Mason City Company could use the tracks of the Union Pacific in Nebraska for the purpose of delivering to the Rock Island Company a car coming from the West for transportation to the West, the Missouri River Bridge not being used or crossed by such car. We desire to impress upon the Court that the decision in 1905 of the *Mason City Case* (199 U. S., 160), does not change or alter or enlarge in any way the decision in 1896 of this Court in the *Rock Island Case* (163 U. S., 564).

In the course of his decision in the *Mason City Case*, at pages 167 and 168, Mr. Justice BREWER said :

“ The act of 1871 must be considered as requiring the Union Pacific Company to permit the trains of all roads terminating at the Missouri River at Omaha to

use its bridge. * * * It may be remarked in passing that it is expressly conceded in this case by the Union Pacific Company that there is no question of the * * * capacity of the bridge and approaches for the service asked by the Mason City Company."

The last paragraph of the decision of this Court in the *Mason City Case* is most persuasive that it was not the intention of this Court to give to the Mason City Company any rights with reference to the tracks of the Union Pacific, except as an incident to the passage of trains over the Missouri River Bridge. This paragraph reads as follows :

" One thing more requires notice. It is contended that the terms of the decree are too broad ; that they give to the Mason City Company *not merely the use of the bridge and its approaches, including therein connections with western roads terminating at Omaha*, but also the use of all side or spur tracks connecting the Union Pacific Railroad with private industries, and the track extending northward from the main line of the Union Pacific to the old ferry crossing. *On the argument counsel for the appellee stated that his company made no claim to a right to use these tracks. If the language of the decree is open to this misconstruction it should be corrected, and the Circuit Court may make such correction on proper application*" (199 U. S., 171).

The application suggested by this Court was made to the Circuit Court and the decree corrected (Record, pp. 586 and 587), thus leaving to the Mason City Company under the decree of August 12, 1903, "the use of the bridge and its approaches," as above stated by this Court.

The decree of the United States Circuit Court of August 12, 1903, granting to the Mason City and Fort Dodge Railroad Company the right to the full, equal and joint use of the main and passing tracks of the Union Pacific will be found printed in full at page VII. of the

Appendix to this brief. By this decree, the Mason City Company was given the "full, equal and joint use of the main and passing tracks of the Union Pacific Railroad Company now located and established or which may be hereafter located and established from the eastern terminus of such tracks in Council Bluffs in the State of Iowa to a connection with the Union Stock Yards Railroad and the other railroads connected with the Union Pacific Railroad at South Omaha in the State of Nebraska, including the bridge over which said tracks extend across the Missouri River between the cities of Council Bluffs, Iowa, and Omaha, Nebraska * * * each and all to the same extent and upon the same terms and conditions stated in the contracts between the Union Pacific Railroad Company and the Chicago and Northwestern Railway Company, the Chicago, Milwaukee and St. Paul Railway Company and the Chicago, Rock Island and Pacific Railway Company." And it was further ordered that the defendant and its employes be "forever enjoined, prevented and restrained from interfering in any way with said full, equal and joint use of said property by the complainant The Mason City Company."

After the entry of this decree of August 12, 1903, the Mason City Company purchased a large amount of property adjoining the tracks of the Union Pacific Railroad Company at or near Twentieth Street, in the City of Omaha, for the purpose of constructing a freight house and yards for the transaction of its freight business in Omaha, and established on such property large grain elevators. It is highly important to observe that these terminal facilities of the Mason City Company were purchased and constructed after the entry of the decree, the appeal from which was decided by this Court in 199 U. S. (Record, p. 7).

On the 27th day of April, 1906, the Chicago Great Western Railroad Company (the lessee of the Mason City and Fort Dodge Railroad Company) attempted with one of its engines, operated by its own employees, to switch a car of stucco from

its terminal yards in Omaha, on and over the tracks of the Union Pacific, and deliver the said car of stucco to the Chicago, Rock Island and Pacific Railroad Company in South Omaha (Record, pp. 12, 13 and 38).

The Union Pacific prevented such delivery upon the ground that the contract with the Rock Island Company and with the other tenant lines did not permit the use of its main and passing tracks, except as an incident to the use of the Missouri River Bridge, and that the Rock Island Company and other tenant lines had no right under their contracts or under the decisions of this Court to use the tracks of the Union Pacific, without its permission and consent, for the purpose of switching a car in Omaha or South Omaha onto and over the tracks of the Union Pacific for delivery to any other line in South Omaha. The contention of the Union Pacific was, that it had absolute ownership and control over its great terminal facilities in Omaha and South Omaha, except as they might be subjected to use by connecting lines as incident to transportation over the Missouri River Bridge.

Thereupon, and on the 21st day of May, 1906, a petition was filed by the Mason City and Fort Dodge Railroad Company in the Circuit Court of the United States for the District of Nebraska, alleging a violation by certain employes of the Union Pacific of the injunction contained in the decree of August 12, 1903 (Record, p. 3). An answer to this petition was filed by the Union Pacific on July 2, 1906 (Record, p. 32), in which it denied that it refused to the Mason City Company, or its lessee, the Chicago Great Western Railroad Company, the use of any of the tracks or facilities which it was entitled to use under said decree of August 12, 1903.

The case was tried and a large amount of testimony taken which seemed to clearly develop that the Rock Island Company and the other tenant lines had never claimed the right under their contracts to use the tracks of the Union Pacific

except as an incident to the transportation of cars across the bridge. Neither the terms of the contracts nor the practical construction thereof pretended to give such right.

The lower court sustained the petition of the Mason City Company, and held the employes of the Union Pacific in contempt of court for having violated the provisions of the decree of August 12, 1903, for interfering with the Mason City Company, and its lessee the Chicago Great Western, in the full, equal and joint use of the property of the Union Pacific referred to in said decree.

It is, however, apparent from reading the opinion of Judge MUNGER in the Circuit Court, that the point now pressed was not considered by him. All that the Circuit Court decided was, that the Mason City Company had the right to transport its cars from Council Bluffs, Iowa, across the bridge to its connections with the Union Pacific in Omaha and South Omaha, or to bring its eastbound business from Omaha and South Omaha across the bridge to its connections with the Union Pacific at Council Bluffs. In its memorandum opinion the Court says (Record, p. 584) :

" The object and purpose of the bridge act, as construed by the Supreme Court, was to require the defendant company to permit the complainant company to *enter with its trains upon its tracks at Council Bluffs, operate the same over the track of the Union Pacific to South Omaha, and pass upon the track of Rock Island at South Omaha*, if the Rock Island would permit it to use its tracks at South Omaha. To simply say that it meant a physical connection, only, between the track of complainant and the track of defendant, but did not permit the use of the defendant's track by the trains of the complainant *to go upon the same at Council Bluffs and pass off from the same at South Omaha*, either on its own or some other company's track, with which it had arrangements, would defeat the very purpose and intent of the act."

Again, on the same page the Court said :

" The decree entered in this case, and which was affirmed in the Circuit Court of Appeals and the Supreme Court, clearly granted permission to the complainant company *to enter with its trains upon the track of the defendant company at Council Bluffs to operate its trains over the defendant's road between Council Bluffs and South Omaha, and off from the tracks of the defendant company's road at South Omaha upon its own track or the track of some other company connecting therewith.*"

Again the Court said, at page 584 :

" In the present case, by the decisions of the Court of Appeals and Supreme Court, the defendant company is not only required to connect its tracks, but permit other companies to use the track *in operating their trains between Council Bluffs and South Omaha to a connection with other roads.*"

From the foregoing quotations from the opinion, it is very clear, that the Circuit Court understood that the decree of August 12, 1903, as construed by this Court, gave the Mason City Company, simply the right to cross the bridge and use the approaches, as a necessary incident to the use of the bridge, or as Chief Justice FULLER put it, that the bridge and approaches were one structure, and that it never supposed that its decision would be construed as holding that under said decree of August 12, 1903, the Mason City Company had a right to use the tracks of the Union Pacific Railroad in South Omaha, without reference to and in no way connected with the use of the Omaha Bridge. That is to say, the only right acquired by the Mason City Company under the decree of August 12, 1903, was as understood by the lower court, the right to use such tracks when such use was a part of the transportation of passengers and freight over the bridge from its connection with the Union Pacific in Council Bluffs to connections with the Union Pacific in South Omaha.

An appeal was taken by the Union Pacific Railroad Company from the decree of the Circuit Court to the United States Circuit Court of Appeals on December 21, 1906 (Record, p. 581), which court squarely held that the decree of August 12, 1903, adjudged to the Mason City Company the use of the tracks of the Union Pacific

"to move with its own engines, freight cars to and from its freight yard and grain yard in or near Omaha from and to other railroads connected at or near South Omaha and at Council Bluffs with the tracks of the Pacific Company specified in the decree, *although such movements are not necessary to complete or to effect through transportation of such cars over the river*" (Record, p. 600).

This conclusion was reached upon the theory that the matter was *res adjudicata* and should have been raised in the proceeding in which the decree of August 12, 1903, was entered.

It is important, however, to notice that the Circuit Court of Appeals held that the freight and grain yard of the Mason City Company was constructed after the decree of August 12, 1903 (Record, p. 601). It is, therefore, difficult to see how the principle of *res adjudicata* can be applied, when it was not possible to have raised the question in the proceeding commenced in 1902.

From the decree of the Circuit Court of Appeals affirming the decree below entered December 1, 1908, this appeal has been taken, and the single question presented is :

Whether, under the Bridge Acts of 1866 and 1871, under the contract between the Union Pacific Railroad and the Rock Island Company of May, 1890, as construed by this Court in 163 U. S., 564, and, under the decree of August 12, 1903, in the *Mason City Case*, affirmed by this Court in 199 U. S., 160,—the Union Pacific has lost the ownership and control of its

terminal properties in Omaha and South Omaha, and may be compelled to permit the use of its main and passing tracks in Omaha and South Omaha, for the local switching of cars by connecting lines, without regard to the crossing by such cars of the Missouri River bridge?

Specifications of Error.

The court below erred :

(1) In affirming the decree of the United States Circuit Court for the District of Nebraska, dated December 1, 1906, finding the defendants guilty of contempt of the decree of said court of August 12, 1903.

(2) In not reversing the decree of said Circuit Court of December 1, 1906.

(3) In holding that the Mason City Company, under the terms of said decree of August 12, 1903, was entitled to the use of the tracks of the Union Pacific in Omaha and South Omaha for the purpose of the local switching of cars, engines and trains operated by its own employes, irrespective of whether such movement was necessary to complete or effect the through transportation of such cars, engines and trains over and across the Missouri River Bridge between Omaha, Nebraska and Council Bluffs, Iowa.

(4) In not holding that under the terms of said decree of August 12, 1903, the said Mason City Company was permitted to use the tracks of the Union Pacific in Omaha, South Omaha and Council Bluffs only in connection with and as part of the transportation of its cars, engines and trains over and across the Missouri River Bridge and as incident to such crossing.

FIRST POINT.

The decree of August 12, 1903, gave to the Mason City Company no right to transfer cars with its own engines to and over the tracks of the Union Pacific and onto the Rock Island tracks in South Omaha, except in connection with and to complete the passage of its cars from the junction of the Mason City Company with the Union Pacific in Council Bluffs across the Missouri River Bridge to the junction of the Rock Island with the Union Pacific in South Omaha.

The western terminus of the line of the Mason City Company is at Council Bluffs, Iowa. It has no line running west from Omaha, but has built near Twentieth Street in Omaha, large freight and grain yards, the tracks in which are connected with the main tracks of the Union Pacific extending from Omaha to South Omaha, and in this yard the Mason City Company has constructed a large grain elevator. The question presented is, whether the Mason City Company has the right to take a car from its freight yard in Omaha with its own engines upon and over the tracks of the Union Pacific down to the connection in South Omaha of the Rock Island with the Union Pacific, and there deliver the said car to the Rock Island Company?

In the consideration of this question, we do not believe that it is necessary to examine with any great care the contracts between the Union Pacific and the so-called tenant lines, which are the Chicago and Northwestern, the Chicago, Milwaukee and St. Paul and the Rock Island Company (Record, p. 158). The rights given to these tenant lines by this Court in 1896 in the *Rock Island Case*, 163 U. S., 564, 586, were given independently of and apart from their contracts, and were based entirely upon the provisions of the so-called Bridge Acts of

1866 and 1871. The contracts were regarded by the Court simply as a convenient measure of the right to use the approaches to the bridge acquired by the so-called tenant lines under the Bridge Acts, and Mr. Justice BREWER in *Union Pacific Railroad Co. vs. Mason City & Fort Dodge Railroad Company*, 199 U. S., 160, speaking of the *Rock Island* decision, said at page 165:

“ While the claim of the plaintiffs in that case was founded directly upon contracts, yet if there were a statutory duty to let them into the joint use of the bridge and its approaches that was enough to sustain a decree in their favor, and the contracts might be regarded as simply relieving the court of the work of settling minor matters, such as method of use, compensation therefor and matter of control.”

It is, therefore, important to have clearly in mind just what the purpose and intention of Congress was in the passage of these two laws.

The Missouri River was a great natural barrier to commerce by rail. Without a bridge, railroads coming to it from the east and from the west would necessarily transport their passengers and freight across the river by ferry and then reload into cars on the other side of the river. To overcome this difficulty, a bridge was necessary, and when in 1871 application was made to Congress by the Union Pacific for the right to build a bridge, it was given subject to the conditions of the former act of 1866.

Now, in this act of 1866, Congress had taken a broad view of the situation and had said that, when a bridge was built across a navigable river by a railroad company to overcome the barrier to commerce by rail, the railroad building such bridge should for a reasonable compensation give the right to cross that bridge to all other railroads centering at that point, and that each railroad as it came to such river should not be obliged to construct a separate bridge of its own. It was a

condition imposed by Congress at the time of giving the right to construct the bridge. The wisdom of the provision is now undisputed.

Perhaps the most important question presented in the *Rock Island Case* (163 U. S., 564), was how much of the Union Pacific track was an approach to the bridge. This Court, taking the same broad view which Congress itself had taken in passing the Act of 1866, said that the use of the bridge intended by Congress was a full, complete and effective use, and that to accomplish this purpose, it was necessary to construe liberally what constituted the approaches to the bridge, and that in its opinion, the necessary approaches, in order to give an effective use of the bridge, meant the main track of the Union Pacific from the junction at South Omaha of the Rock Island with the tracks of the Union Pacific. This view of what should be deemed proper approaches to the bridge was considered by this Court to be sustained by the fact that the Union Pacific in making its contract with the Rock Island evidently thought as a practical matter that its track from the junction of the Rock Island with the Union Pacific at South Omaha to the Omaha Bridge was a necessary approach to such bridge.

It is therefore clear, from the policy indicated in these Bridge Acts, and carried out in their construction by this Court in 163 U. S., 564, that railroads centering at any point on a navigable river have a right to use, for a reasonable compensation, any railroad bridge at such point and its necessary approaches, but that such policy was limited and intended to be limited, both by Congress and this Court, to the use of the approaches as a means of getting to and from the bridge. In other words, the use of the approaches was an incident to and subordinate to the use by the railroads of the bridge itself. This policy of the Government was based on broad common sense, and it is not possible to find any foundation either in the Bridge Acts or in the opinions of this Court for the claim now

for the first time made, that the right to the use of the bridge and its approaches gave to the connecting lines a right to use such approaches without reference to and apart from the use of the bridge.

It was something of a concession to the broad views of Congress that this Court held that the necessary approaches to the Missouri River Bridge covered a line of road four to five miles in length when used in connection with the transportation of cars and trains across the bridge, but it is inconceivable that that policy should be extended, so as to give the right to use that four miles of track for the local switching of cars by connecting lines with their own engines, when such switching has nothing to do with the transportation of trains and cars across the bridge.

It is not plain what reason can be advanced for the surrender by the Union Pacific of its tracks to connecting lines for any purpose other than that given under the policy of Congress to such connecting lines by the Bridge Acts of 1866 and 1871, viz., to use such tracks as a means of getting to and from the bridge across the Missouri River.

It is difficult to elaborate this proposition. It seems to us almost too obvious for argument. Congress, and this Court, in the construction of the policy of Congress as contained in the Bridge Acts, have given to the connecting lines in Omaha and Council Bluffs the right to use the Missouri River Bridge. As an incident to that right, such connecting lines have also been given the use of the necessary approaches to enable them in a practical manner to get onto and away from the bridge. That is all that Congress and this Court gave or intended to give. This Court gave the right to the use of the approaches with a liberal hand. We are not here to dispute or raise any of the questions which came up, either in the *Rock Island Case*, 163 U. S., 564, or the *Mason City Case*, 199 U. S., 160. We simply say that when Congress and this Court gave to the connecting lines of the Union Pacific the use of the

Omaha Bridge and its approaches, they did not give, and never intended to give, any right to the use of the tracks of the Union Pacific apart from and unconnected with the use of the bridge, and we insist that there is no ground or reason for such claim. Certainly none has ever been suggested.

SECOND POINT.

The Union Pacific is not estopped, in this proceeding to punish its officers for contempt of the decree of August 12, 1903, from claiming that the only question arising in and determined by the original suit in which such decree was entered was whether the Mason City Company had the right to use the Omaha bridge and tracks of the Union Pacific in Council Bluffs, Omaha and South Omaha for the transportation of its freight and passengers across the Missouri River, and from now asserting that the Mason City Company had no right under said decree to use the tracks of the Union Pacific in Omaha and South Omaha for the local switching of its trains and cars in no way connected with the passage of such trains and cars across the Missouri River Bridge.

In the Circuit Court of Appeals the question is well stated in the following words :

“ The second proposition is that the Mason City Company had no right to move cars with its own engines over the connection of the Union Pacific tracks with the tracks of the Rock Island Company at South Omaha or from or to its freight yard and grain yard in Omaha,

except to effect and complete a transfer of such cars across the gap between South Omaha and Council Bluffs, that it had no right to the use of this connection to exchange between other railroad companies cars which did not necessarily pass over the bridge in order to effect their trips " (Record, p. 605).

No satisfactory answer to this proposition was advanced by the Circuit Court of Appeals, but it held that the Union Pacific was estopped from raising this question for the reason that it could have been and therefore should have been raised in the original proceeding in which the decree of August 12, 1903, was entered. As to this, it is said in the opinion of Judge SANBORN as follows :

" It is true that the object of the requirement of the acts of Congress was to bridge the transportation gap and to facilitate the transfer of cars passing between railroads east and railroads west of the Missouri River, but this fact did not deprive the court, which was called upon to enforce this legislation, of its jurisdiction to prescribe the limits and the terms of the use which the Pacific Company should allow, nor of its power and duty to exercise a wide and wise judicial discretion in fixing those limits and terms. What those should be were questions necessarily involved in the suit, which resulted in the decree of 1903. * * * The questions whether or not these acts of Congress authorize, and Congress intended, that the use now claimed should be permitted, was open to litigation and was necessarily decided in the original suit and it is too late for the parties to that litigation to debate that issue now, for in a second controversy between the same parties, or their privies, not only every matter offered or every matter which might have been offered to sustain or defeat, in whole or in part, the cause of action is rendered *res adjudicata* upon the merits by the former judgment " (Record, pp. 605, 606).

The Circuit Court of Appeals cites several authorities in support of its conclusion, but as it seems to us, none of them apply in any way to the facts which appear in the case at bar.

At the time the original suit was begun by the Mason City Company in 1902, it had no freight yard or grain yard or any facilities in Omaha. Its western terminus was, as it now is, Council Bluffs, Iowa, and the sole question litigated and determined in the original suit was, whether the Mason City Company had the right to transport its cars and trains and engines from its connection with the Union Pacific in Council Bluffs to the connections with the Union Pacific across the river in the cities of Omaha and South Omaha.

Not only was the question now before the Court not in litigation and determined in the original proceeding begun in 1902, but it could not have arisen then, because at that time, the Mason City Company had no terminal facilities in Omaha, and it was therefore impossible to raise in the original suit the right of the Mason City Company to switch its cars and trains and engines from its freight and grain yards in Omaha on and over the tracks of the Union Pacific and to deliver them to the Rock Island in South Omaha.

The case first cited, and upon which the court below apparently relied, is *Cromwell vs. County of Sac*, 94 U. S., 351. There it was held that an action against a county in Iowa upon certain interest coupons of bonds, issued by the county for the erection of a court house, in which it was found and determined that the bonds were void as against the county in the hands of parties who did not acquire them before maturity for value, was not a bar to a subsequent action between the same parties holding other bonds and other coupons of the same series, and did not prevent the plaintiff from showing in the second action against the county that he had acquired such bonds and coupons for value before maturity. In the course of the opinion, it was said at page 353, 356 :

"But where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered. In all cases, therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action, *not what might have been thus litigated and determined*. Only upon such matters is the judgment conclusive in another action. * * * It is not believed that there are any cases going to the extent that because in the prior action a different question from that actually determined might have arisen and been litigated, therefore such possible question is to be considered as excluded from consideration in a second action between the same parties on a different demand. * * * *On principle, a point not in litigation in one action cannot be received as conclusively settled in any subsequent action upon a different cause, because it might have been determined in the first action.*"

If we understand this case, it is an authority in our favor and not against us. In the original suit the only question was - whether under the Bridge Acts the Mason City Company had a right to use the Missouri River Bridge and its approaches on both sides of the river. Any reference to the contract with the tenant lines was simply to measure its right to use the approaches, this Court having held in the *Rock Island Case* (163 U. S., 564), that the only rights given by the contract with the tenant lines were the rights which they already had in and by reason of the Bridge Acts, independent of the contract. The reference to the contract was simply a method of determining just what approaches the Mason City Company had a right to use in order to have a full and complete

and reasonable use of the bridge. That was the single question litigated and determined in the original suit. Therefore that case was an estoppel and a bar preventing the Union Pacific from again raising this question in any proceeding between it and the Mason City Company.

It is, however, perfectly certain that in the original suit resulting in the decree of August 12, 1903, there was not raised or intended to be raised or litigated or determined in any way the question of the right of the Mason City Company to use the tracks in Omaha and South Omaha for the purpose of local switching of the cars and trains of the Mason City Company, apart and distinct from the passage of said trains and cars over the Missouri River Bridge.

In *Enfield vs. Jordan*, 119 U. S., 680, 691, it was said:

“If the defendant sought to set up in this suit some new defence, which was not made in the former one, and not necessarily decided therein, it should have been allowed to do so, under the ruling of this court in *Cromwell v. Sac County*, 94 U. S., 351, 354.”

Therefore, under the *Sac County Case*, and its approval in the later decisions of this Court, the Union Pacific is not barred in this new proceeding, in which it is attempted to punish its officers for contempt of the decree of 1903, from asserting that the present question now in controversy was not litigated or determined in the original suit and is now open to it as a defense.

Further than that, we say, not only that this present question now before this Court was not raised, litigated or determined, in the original suit, but that it could not have been raised, litigated or determined, in the original suit because of the fact that at the time the original suit was begun the Mason City Company had no freight or grain yard in Omaha, and there was therefore no opportunity in the original suit to raise the present question.

In the case of the *Southern Pacific Railroad Company vs. United States* (168 U. S., 1), the contention was as to the sufficiency of certain maps of definite location filed by the Atlantic and Pacific Railroad Company. The Government contended that the sufficiency of these maps had already been litigated and determined in a prior litigation between the United States and the Southern Pacific Company, and that the Southern Pacific was barred from raising in the subsequent litigation the question of their sufficiency. This Court went fully into the question of *res adjudicata* and determined adversely to the Southern Pacific Railroad, because of the fact that in its opinion the sufficiency of these maps was in direct issue in the original suit. The question of estoppel by a former judgment was discussed at page 48 as follows :

“ The general principle announced in numerous cases is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies, and even if the second suit is for a different cause of action, the right, question or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified.”

After discussing all the authorities, this Court went on to say as follows, at page 52 :

“ In view of these adjudications, it would seem that the controlling inquiry is whether, under the pleadings in the former cases, the sufficiency of the Atlantic and Pacific maps of 1872 as maps of definite location, was a matter in issue and determined, as between the United States and the Southern Pacific Railroad Company.”

In *Russell vs. Place*, 94 U. S., 606, 608, it was said by Mr. Justice FIELD :

“ It is undoubtedly settled law that a judgment of a court of competent jurisdiction, upon a question di-

rectly involved in one suit, is conclusive as to that question in another suit between the same parties. But to this operation of the judgment it must appear, either upon the face of the record or be shown by extrinsic evidence, *that the precise question was raised and determined in the former suit*".

In *Johnson Company vs. Wharton*, 152 U. S., 252, 261, Mr. Justice HARLAN stated the principle as follows :

"The inquiry as to the conclusiveness of a judgment in a prior suit between the same parties can only be whether the court rendering such judgment—whatever the nature of the question decided, or the value of the matter in dispute—had jurisdiction of the parties and the subject-matter, and *whether the question, sought to be raised in the subsequent suit, was covered by the pleadings and actually determined in the former suit*".

In the case at bar, the pleadings in the suit brought in 1902 put in issue simply the question of the right of the Mason City Company to use the bridge and its approaches under and by reason of the provisions of the Bridge Acts. There was not "covered by the pleadings and actually determined" in the suit the question of the right of the Mason City Company to use the tracks of the Union Pacific in Omaha and South Omaha for local switching unconnected with the use of the bridge and its approaches.

In the case of *The Haytian Republic*, 154 U. S., 118, 128, 129, Mr. Justice WHITE said :

"It is urged that, as the matters could have been joined in the Washington suit, therefore they would have been concluded by a decree rendered therein, the argument being that a judgment concludes not only the matters actually in controversy, but all those which might have been adjudged.

* * * * *

"If the deduction drawn by counsel from this and similar language were true, then a judgment upon one

cause of action would be conclusive as to every other existing at the time, although not embraced in the suit, and although the parties were not obliged to join it therein. This would destroy the right of parties to sue separately upon distinct causes of action, and would be subversive of the entire theory of the thing adjudged. The mistake lies in construing the words 'which might have been raised,' as applying to a cause of action other than the cause of action embraced in this suit."

In *Last Chance Mining Co. vs. Tyler Mining Co.*, 157 U. S., 683, 687, Mr. Justice BREWER again stated the law as follows :

"The law in respect to estoppel by judgment is well settled, and the only difficulty lies in the application of the law to the facts. The particular matter in controversy in the adverse suit was the triangular piece of ground, which is not the matter of dispute in this action. The judgment in that case is therefore not conclusive in this as to matters *which might have been decided, but only as to matters which were in fact decided.*"

It would seem, therefore, that this Court has made the test of the right to raise and litigate a question in a subsequent litigation between the same parties,—whether the question was raised, litigated and determined in the original suit between them.

We again assert that the question of the right of the Mason City Company to do local switching on the Union Pacific tracks in Omaha and South Omaha, apart from and in no way connected with the crossing of the Missouri River Bridge, was not only not in issue and not determined in the original suit of 1902, which is the test of this Court, but could not have been in issue and could not have been determined, because the Mason City Company had no freight yards or grain yards in Omaha at that time.

Let us look at the character of the original case. It was a bill in equity to compel the Union Pacific to give to the Mason

City Company the rights which the latter company was entitled to by reason of the Bridge Acts of 1866 and 1871. These rights, for convenience, were measured by the contracts with the tenant lines, and the Mason City Company simply asked to have the same rights under the Bridge Acts which the other connecting lines had, and which, so far as the approaches to the bridge were concerned, were measured by and defined by this Court in the *Rock Island Case* (163 U. S., 564), to be the same as the rights under the contract of 1890 with the Rock Island Company.

Now, of course, there was no reason and no opportunity in this original proceeding to put in issue any question of local switching, when no such claim was made by the complainant, and when the tenant lines under their contracts had never claimed or exercised any such right. The decree in this original proceeding only gave to the Mason City Company that which it asked for, viz., the right to use the bridge and approaches just as the other connecting lines did, and it did not ask and did not undertake to obtain in the original proceeding the right to do local switching apart from the use of the bridge.

When you add to this the fact that at the time of the decree of 1903 the Mason City Company had no freight or grain yards in Omaha, and therefore had no reason and was in no position to make any such claim, it is impossible to see why in a proceeding to punish the officers of the Union Pacific for contempt of the decree of August 12, 1903, the Union Pacific is barred and prevented from showing in such proceeding that the decree of August 12, 1903, entered in the original case did not give the right to the Mason City Company to do local switching, and that such question not only was not in issue and not litigated, but could not have been raised, litigated or determined in the original suit.

THIRD POINT.

The evidence shows that no tenant line under the decree in the Rock Island suit or under the contracts with the Union Pacific ever attempted to transfer its cars by its own engines over the lines of the Union Pacific without reference to the crossing of the Missouri River Bridge.

The record in this case is voluminous. It is very conflicting and confusing and on the part of the Mason City Company is almost entirely devoted to attempting to prove that the congestion on the tracks of the Union Pacific would be less if the interchange of cars was done by the engines of the Mason City Company, than if the cars and trains were switched by the Union Pacific. It is, of course, somewhat difficult to see how the congestion on the main line of a single track railroad doing the enormous business of the Union Pacific would be less if all the tenant lines, four in number, were permitted at will and at any connection to switch onto and off from the main track of the Union Pacific, than if the switching were done by the Union Pacific alone, the regulation of the switching thereby coming under one management and control which would have comprehensive conduct of the entire business done on its main line of track.

But be this as it may, it seems to us that this testimony is unimportant and irrelevant to the only question in this case. Assuming, for the purpose of argument, that the congestion would be greater on the main track of the Union Pacific, if the switching of the tenant lines onto and off from the main track of the Union Pacific was done by the engines of the Union Pacific, yet we cannot see how that affects the right of the Union Pacific to use its tracks as it chooses, subject only to the right of its connecting lines to the use of the bridge and approaches for the purpose of covering the gap in transportation by rail caused by the Missouri River.

All of the testimony in this record is regarded by us as not touching in any way the question of the right of the Mason City Company to use the tracks in Omaha and South Omaha for local switching, unconnected with the crossing of the river. Of course the tracks of the Union Pacific are its property and subject to its supervision and control. This property, and the supervision and control thereof, cannot be taken from the Union Pacific and given to its connections, except upon the theory that the Government, in giving the Union Pacific the right to build the Missouri River Bridge, subjected that bridge and the approaches thereto to the use of the connections of the Union Pacific. To now sustain this claim of the Mason City Company on some other theory, and upon the suggestion of the court below, that the tracks of a railroad in any of our great cities are subject to the use of other railroads connecting therewith, because of the crowded conditions in any large place, is not proper in this proceeding. If railroads cannot as a practical matter get into some large city and cannot make trackage arrangements with a railroad already there, they cannot acquire such rights under a bridge act giving them the right to use a bridge and its approaches as one structure, but must do so in some appropriate proceeding for such purpose in which the right would be granted under proper and guarded conditions. The property of the Union Pacific cannot be taken from it under the suit of 1902 for purposes not connected with or relating to the use of the bridge and its approaches and, to give to its connections in such suit the property of the Union Pacific for general purposes and without reference to the use of the structure across the Missouri River consisting of the bridge and its approaches, would be to take its property without due process of law, and without just compensation. There is no more reason for giving the privilege of local switching in Omaha, unconnected with crossing the bridge, to the connections of the Union Pacific, than to give such privilege to connections of the Union Pacific at any other of the large cities through which it runs.

So far, therefore, as this question which we now present is concerned, the voluminous and confusing testimony is of little importance. The only question which seems definitely determined by this testimony is that no tenant line under its contract with the Union Pacific and under the decree of this Court in the *Rock Island Case* has ever claimed or attempted to exercise the right to do local switching in Omaha and South Omaha apart from the transportation of its cars across the Missouri River Bridge. If anything of this kind has been done by tenant lines, it has been done only in single instances and under cover and never done openly and in such manner and to such an extent as to create any custom.

The switching done by the Union Stock Yards is, of course, an entirely independent matter and is covered by an especial agreement between the Union Pacific and the Stock Yards Company, dated April 27, 1896 (Record, pp. 422, 423).

David T. Crawford, who had been connected with the Union Pacific for nine years, and at the time his testimony was taken had been General Yardmaster of the terminals at Omaha in the bridge district for nine months, testified at page 65 as follows :

"Q. Have you ever known since you have been yardmaster at the Union Pacific of any one of the tenant or contract roads to attempt to make a direct delivery other than in the case of the Great Western road?

"A. The Rock Island made the attempt at Twentieth Street.

"Q. When?

"A. I don't know the date.

"Q. Within nine months? A. Yes, sir.

"Q. What did the Rock Island attempt to do at that point?

"A. Attempted to go up to the Independent elevator.

"Q. What did you do with reference to that attempt?

"A. We didn't let them go up there.

"Q. How were they prevented from going there?

"A. Simply took the switches away from them.

"Q. Did they ever make any other or further attempt than that one? A. Not that I know of.

"Q. Have they ever since that time made the direct connection that was attempted at that time?

"A. No, sir."

Charles Ware, who had been with the Union Pacific since 1890 and Superintendent of the Nebraska Division for a little more than a year, testified at pages 99 and 100 of the record as follows:

"Q. For how many years, Mr. Ware, have your duties been of such a character that you were made familiar with the manner of the interchange of freight in less than carload lots and carload lots of freight as between the Union Pacific and the tenant lines or as between tenant lines themselves?

"A. Since 1900.

"Q. Since that time has any tenant line of the Union Pacific, meaning the Chicago Great Western, the Milwaukee, the Northwestern or the Rock Island, ever attempted as between themselves at Omaha or South Omaha or at any other points where there was a connection with the Union Pacific Railroad, to make direct delivery to each other?

"A. No, sir; not until along in April, I think it was, the Great Western attempted to take direct delivery from the Rock Island, and the Rock Island attempted to take a direct delivery from the Great Western.

"Q. In your experience do you know of any other attempts to make that connection? A. No, sir."

Frank H. Keeshen, who had been in the employ of the Union Pacific from 1874, testified at page 137 as follows:

"Q. During the time you were yardmaster with the Union Pacific Railroad Company, did you ever know an instance of any one of the four tenant lines making direct delivery, the one to the other, within the City of Omaha? A. No, sir."

William Lee Park, who had been with the Union Pacific for thirty-one years and had been sixteen months at Omaha, testified at pages 158 and 159 as follows :

" Q. And from your investigations, what did you learn, if anything, with reference to interchange of cars direct between tenant lines of the Union Pacific, or between tenant lines and other lines that had physical connection with the Union Pacific ?

" A. I understood that there were certain privileges accorded to the tenant lines between certain limits.

" Q. Did those privileges include a direct exchange of cars between the tenant lines, or between the tenant lines and other roads having connection with the Union Pacific ? A. They did not."

J. M. Henry, who had been Assistant Yardmaster at South Omaha for a long time, testified at page 168 as follows :

" Q. Did you ever know the Northwestern, the Rock Island, the Milwaukee, the Burlington or the Chicago Great Western to enter directly over the Union Pacific track upon this Missouri Pacific track with engines or cars, for the purpose of delivering cars or freight? A. No, sir.

" Q. Did you ever know them to make an attempt to do that? A. No, sir.

" Q. Did you ever know of them asking permission so to do? A. No, sir."

Again at page 171 he testified :

" Q. You knew that the Great Western had by the Court been given the right to use the Union Pacific tracks?

" A. I did not know that; I supposed they had. All I know is just my orders, that the Great Western was coming over.

" Q. And you simply obeyed those orders? A. Yes, sir; treated them the same as I did the rest."

James J. Sherlock, who had been Local Freight Agent at Omaha for several years, testified at page 196 as follows :

" Q. Do you know whether any attempt has been made since the Great Western freight house was built and in operation in Omaha to deliver any freight on the part of any one of the other three tenant lines to the Great Western in Omaha direct ?

" A. No, sir."

William R. Cahill, the Assistant Superintendent at Omaha, testified, at page 198, as follows :

" Q. You may state whether or not under the practice and custom now obtaining in Omaha, any of the tenant lines have the right to make a direct delivery of a car of freight or an empty car to any other tenant line, whether in Omaha or South Omaha ?

" A. They have not to my knowledge.

" Q. Have any of the tenant lines, so far as you know, made any such direct deliveries or exchanges between themselves either in Omaha or South Omaha ?

" A. Not that I am aware of."

The same witness again testified, at page 212, as follows :

" Q. Have you ever known since you were train-master or assistant superintendent, of any tenant line, and I mean by the tenant lines the Great Western, the Rock Island, the Milwaukee, or the Northwestern, with the exception of the two cases you mentioned, attempting to make a direct connection with the Great Western tracks at Twentieth street, or with the Missouri Pacific connections at G street, or with the Missouri Pacific connection at N street, or with the Rock Island connection just before that, or with the Burlington connection between the two ?

" A. I have not.

" Q. But those connections have been in existence at all times since you have occupied the two positions you have told about ?

" A. Yes, sir, they have."

A. L. Mohler, Vice-President and General Manager of the Union Pacific, testified at pages 271 and 272 as follows :

" Q. And have you within two years, and prior to the time of the refusal to allow the Rock Island to make connections with the Great Western road at 20th street, inquired into and become conversant with the customs that have been established between tenant lines and the Union Pacific, with reference to handling trains under the contract ?

" A. In a general way, yes.

" Q. As a result of that investigation into the custom that prevailed between the Union Pacific and the tenant lines, did you find that any tenant line had ever attempted a direct interchange of cars between itself and any other road connecting with the Union Pacific ?

" A. There is no case that has come to my knowledge where any company undertook to invade what we supposed were our contract rights, except in this instance.

" Q. And during all of these years that these contracts have been in effect, did you understand from your examination, that the Union Pacific should act as the switching intermediary in such an exchange of cars as I indicated in the preceding question ?

" A. That has been the practice and the custom as I understood it, and that is the reason that I so construed the contract."

J. E. Wright, the yardmaster of the Rock Island, testified as pages 336 and 337 as follows :

" A. I believe it was on the 22nd day of April [1906], if I remember right, I received instructions to make interchange between the Great Western and the Rock Island.

" Q. Direct ? A. Direct.

" Q. That was in the shape of an order, wasn't it ?

" A. Yes, sir ; message instructions.

" Q. When was that order put out ?

" A. April 22nd, if I remember right.

* * * * *

" Q. What date did you make the attempt ?

" A. I made the attempt May 3rd.

* * * * *

" Q. Is that the first order that you had ever received to that effect ? A. Yes, sir."

The foregoing portions of the testimony in this case seem to clearly indicate beyond any reasonable doubt that no tenant line had ever attempted to make in Omaha or South Omaha a direct interchange of its cars and trains with any connecting line of the Union Pacific by its own engines before the incident which led to the bringing of this proceeding to punish the officers of the Union Pacific for contempt. The question at once presents itself as to why the Chicago Great Western, the lessee of the Mason City Company, should have attempted to make this direct interchange in 1906. The answer is not very far to seek.

At that time the elevator in the grain yard of the Mason City Company had been completed, and it was the desire of the owners of that elevator that the grain should be taken to and from that elevator without being burdened by the ordinary switching charges of the Union Pacific for such service. Of course, if the Mason City Company could accomplish this for its elevators, it would place such elevator on a better basis than any other, and that such was the reason and the cause of this attempt by the lessee of the Mason City Company is shown by the testimony of Mr. Stickney, who was then the President of the Chicago Great Western Company. At pages 278 and 279 he says :

" Now, the next largest industry in this city to-day, is the grain business. Since the grain exchange has been established here, which is only two or three years, this industry has grown enormously. The Secretary of the Grain Exchange is making up for me, a statement of the number of cars received, cars of grain received, here during the year just past, and I was

looking it over this morning as far as he got; it seemed to indicate that it would show over thirty thousand cars of grain received in this market during the past year. Now, that is, as I understand it, about one-sixth as many cars as are received at the South Omaha Stock Yards. It is my idea that the grain business is just in its infancy, and it needs and requires special accommodations of a similar character to live stock business. * * * Believing that, I or the Mason City & Fort Dodge have purchased a considerable tract, some thirty-four or thirty-five acres, upon the east side of the Union Pacific track, extending from about Martha Street to the city limits, upon which we have already built an elevator with a capacity of something over a million bushels, and on which a new elevator is being built that will have a capacity of about a million bushels, and there is still room there for several more. *Now I think that the grain business of the grain market here must be freed from all unnecessary expenses in the way of switching. The grain business is done on very small margin, and it cannot afford and will not thrive if burdened with unnecessary switching.*"

Again, at pages 284 and 285, Mr. Stickney says :

"As it is now, the Missouri Pacific would have to deliver it to the Union Pacific and then the Union Pacific would switch it down to 20th Street or to G Street, and the Great Western would have to switch it either from 20th Street to the elevators, or from G Street to the elevators, burdening their grain with switching charges of \$4.00, which otherwise would have no burden whatever upon it. * * * A train coming from the east with grain could head right in there and take their load right up to the terminals without burdening it with any switching charge as against the method insisted upon by the Union Pacific of first setting it in to the 20th Street yards and then they switch it out and put it in to our 20th Street yard, charging \$2.00 for that, and then the Great Western would have to charge \$2.00 for taking it up which would burden that grain with \$4.00 per car, which is entirely unnecessary."

It is very evident from this testimony that the idea of the President of the Chicago and Great Western was that the elevator of the Mason City Company should have a preference over other elevators and should gain such preference at the expense of the Union Pacific by the use of its tracks free of charge for the purpose of switching its cars to and from such elevator, the claim of Mr. Stickney being that the use of the tracks of the Union Pacific for local switching in South Omaha was included in and covered by the amount paid for the use of the bridge and its approaches.

None of this testimony is relative to the question presented, which simply is—that the decree entered in the proceeding begun in 1902 by the Mason City Company to establish its rights under the Bridge Acts of 1866 and 1871 gave to such company only the right to use the bridge and its approaches as one structure, as was stated by Mr. Chief Justice FULLER, for the purpose of transferring its cars and trains from its western terminus at Council Bluffs, Iowa, to the connections of the Union Pacific on the west in Omaha and South Omaha. This proceeding was begun to establish this right and this right only, and the final decree entered therein in 1903 which is now said to be violated by the officers of the Union Pacific in preventing the use of its tracks in Omaha and South Omaha for local switching without regard to the crossing of the bridge by the trains and cars of the Mason City Company, established such right and nothing else.

We therefore insist that the right of the Union Pacific to use its own property, built by it at great expense, in the cities of Omaha and South Omaha, is not taken from it by this decree of 1903, except as such property is made subject to the right of its connections to use the bridge and its approaches to cross the Missouri River.

FOURTH POINT.

The decree of the court below should be reversed.

MAXWELL EVARTS,
N. H. LOOMIS,
Of Counsel for Appellants.

APPENDIX.

Bridge Act of 1868.

An Act to Authorize the Construction of Certain Bridges, and to Establish Them as Post Roads.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for any person or persons, company or corporation, having authority from the States of Illinois and Missouri for such purpose, to build a bridge across the Mississippi River at Quincy, Illinois, and to lay on and over said bridge railway tracks, for the more perfect connection of any railroads that are or shall be constructed to the said river at or opposite said point, and that when constructed all trains of all roads terminating at said river, at or opposite said point, shall be allowed to cross said bridge for reasonable compensation, to be made to the owners of said bridge, under the limitations and conditions hereinafter provided. And in case of any litigation arising from any obstruction or alleged obstruction to the free navigation of said river, the cause may be tried before the district court of the United States of any State in which any portion of said obstruction of bridge touches.

SEC. 2. *And be it further enacted, That any bridge built under the provisions of this act may, at the option of the company building the same, be built as a drawbridge, with a pivot or other form of draw, or with unbroken or continuous spans: Provided, That if the said bridge shall be made with unbroken and continuous spans, it shall not be of less elevation in any case than fifty feet above extreme high-water mark, as understood at the point of location, to the bottom chord of the bridge, nor shall the spans of said bridge be less than two hundred and fifty feet in length, and the piers of said bridge shall*

be parallel with the current of the river, and the main span shall be over the main channel of the river and not less than three hundred feet in length: *And provided also*, That if any bridge built under this act shall be constructed as a draw-bridge, the same shall be constructed as a pivot drawbridge with a draw over the main channel of the river at an accessible and navigable point, and with spans of not less than one hundred and sixty feet in length in the clear on each side of the central or pivot pier of the draw, and the next adjoining spans to the draw shall not be less than two hundred and fifty feet; and said spans shall not be less than thirty feet above low water mark, and not less than ten above extreme high water mark, measuring to the bottom chord of the bridge, and the piers of said bridge shall be parallel with the current of the river: *And provided also*, That said draw shall be opened promptly upon reasonable signal for the passage of boats, whose construction shall not be such as to admit of their passage under the permanent spans of said bridge, except when trains are passing over the same; but in no case shall unnecessary delay occur in opening the said draw during or after the passage of trains.

SEC. 3. *And be it further enacted*, That any bridge constructed under this act, and according to its limitations, shall be a lawful structure, and shall be recognized and known as a post route; upon which, also, no higher charge shall be made for the transmission over the same of the mails, the troops, and the munitions of war of the United States, than the rate per mile paid for their transportation over the railroads or public highways leading to the said bridge.

SEC. 4. *And be it further enacted*, That it shall be lawful for the Chicago, Burlington and Quincy Railroad Company, a corporation whose road has been completed to the Mississippi River, and connects with a railroad on the opposite side thereof, having first obtained authority therefor from the State of Illinois and Iowa, to construct a railroad bridge

across said river, upon the same terms, in the same manner, under the same restrictions, and with the same privileges, as is provided for in this act in relation to the bridge at Quincy, Illinois.

SEC. 5. *And be it further enacted*, That a bridge may be constructed at the town of Hannibal, in the State of Missouri, across the Mississippi River, so as to connect the Hannibal and Saint Joseph Railroad with the Pike County and Great Western railroads of Illinois, on the same terms and subject to the same restrictions as contained in this act for the construction of the bridge at Quincy, Illinois.

SEC. 6. *And be it further enacted*, That a bridge may be constructed across the Mississippi River between Prairie du Chien, in the State of Wisconsin, and North McGregor, in the State of Iowa, with the consent of the legislatures of Wisconsin and Iowa, on the same terms and subject to the same restrictions as are contained in this act for the construction of the bridge at Quincy, Illinois.

SEC. 7. *And be it further enacted*, That the Keokuk and Hamilton Mississippi Bridge Company, a corporation existing under the laws of the State of Iowa, and the Hancock County Bridge Company, a corporation existing under the laws of the State of Illinois, be and are hereby authorized to construct and maintain a bridge over the Mississippi River between Keokuk, Iowa, and Hamilton, Illinois, of the same character, description and construction as provided in this act for the bridges at Quincy and Burlington; and the said bridge, in its use and operation, shall be subject to the same restrictions that apply to said bridges at Quincy and Burlington by the terms of this act.

SEC. 8. *And be it further enacted*, That the Winona and St. Peter Railroad Company, a corporation existing under the laws of the State of Minnesota, is hereby authorized to construct and operate a railroad bridge across the Mississippi River between the city of Winona, in the State of Minnesota,

and the opposite bank of the said river, in the State of Wisconsin, with the consent of the legislatures of the States of Minnesota and Wisconsin; and said bridge by this section authorized is hereby declared a post route, and subject to all the terms, restrictions and requirements contained in the foregoing sections of this act.

SEC. 9. *And be it further enacted*, That a bridge may be constructed and maintained across the Mississippi River, between Dunleith, in the State of Illinois, and Dubuque, in the State of Iowa, with the consent of said States previously given or hereafter acquired, with the same privileges, upon the said terms, and under the same restrictions as are contained in this act for the construction of a bridge at Quincy, Illinois.

SEC. 10. *And be it further enacted*, That any company authorized by the legislature of Missouri may construct a bridge across the Missouri River, at the city of Kansas, upon the same terms and conditions provided for in this act.

SEC. 11. *And be it further enacted*, That the "Saint Louis and Illinois Bridge Company," a corporation organized under an act of the general assembly of the State of Missouri, approved February fifth, eighteen hundred and sixty-four, and an act amendatory of the same, approved February twentieth, eighteen hundred and sixty-five, and also confirmed in its corporate powers under an act of the legislature of the State of Illinois, approved eighteen hundred and sixty-four, or any other bridge company organized under the laws of Missouri and Illinois, be, and the same is hereby, empowered to erect, maintain, and operate a bridge across the Mississippi River, between the city of Saint Louis, in the State of Missouri, and the city of East Saint Louis, in the State of Illinois, subject to all the conditions contained in said act of incorporation and amendments thereto, and not inconsistent with the following terms and provisions contained in this act. And in case of any litigation arising from any obstruction or alleged obstruction to the free navigation of said waters the cause may be tried before

the district court of the United States of any State in which any portion of said obstruction or bridge touches.

SEC. 12. *And be it further enacted*, That the bridge authorized by the preceding section to be built shall not be a suspension bridge, or drawbridge, with pivot or other form of draw, but shall be constructed with continuous or unbroken spans, and subject to these conditions : First, that the lowest part of the bridge or bottom chord shall not be less than fifty feet above the city directrix at its greatest span. Second, that it shall have at least one span five hundred feet in the clear, or two spans of three hundred and fifty feet in the clear of abutments. If the two latter spans be used, the one over the main steamboat channel shall be fifty feet above the city directrix, measured to the lowest part of the bridge at the centre of the span. Third, no span over the water at low-water mark, shall be less than two hundred feet in the clear of abutments.

SEC. 13. *And be it further enacted*, That the right to alter or amend this act, so as to prevent or remove all material obstructions to the navigation of said river by the construction of bridges, is hereby expressly reserved.

Approved July 25, 1866.

Bridge Act of 1871.

An Act to authorize the Union Pacific Railroad Company to issue its Bonds to construct a Bridge across the Missouri River at Omaha, Nebraska, and Council Bluffs, Iowa.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the more perfect connection of any railroads that are or shall be constructed to the Missouri river, at or near Council Bluffs, Iowa, and Omaha, Nebraska, the Union Pacific Railroad Company be, and it is hereby, authorized to issue such bonds, and secure the same by mortgage on the bridge and approaches and appurtenances, as it may deem needful to construct and maintain its bridge over said river, and the tracts and depots required to perfect the same, as now authorized by law of Congress; and said bridge may be so constructed as to provide for the passage of ordinary vehicles and travel, and said company may levy and collect tolls and charges for the use of the same; and for the use and protection of said bridge and property, the Union Pacific Railway Company shall be empowered, governed, and limited by the provisions of the act entitled "An act to authorize the construction of certain bridges, and to establish them as post roads," approved July twenty-five, eighteen hundred and sixty-six, so far as the same is applicable thereto: And provided, That nothing in this act shall be so construed as to change the eastern terminus of the Union Pacific railroad from the place where it is now fixed under existing laws, nor to release said Union Pacific Railroad Company, or its successors, from its obligation as established by existing laws: Provided also, That Congress shall at all times have power to regulate said bridge, and the rates for the transportation of freight and passengers over the same, and the local travel hereinbefore provided for. And the amount of bonds herein authorized shall not exceed two and a half millions of dollars: Pro-

vided, That if said bridge shall be constructed as a drawbridge the same shall be constructed with spans of not less than two hundred feet in length in the clear on each side of the central or pivot pier of the draw.

Approved, February 24, 1871.

Decree of August 12, 1903.

UNITED STATES CIRCUIT COURT,

DISTRICT OF NEBRASKA.

MASON CITY AND FORT DODGE
RAILROAD COMPANY,
Complainant,

vs.

UNION PACIFIC RAILROAD COMPANY,
Defendant.

This day came the complainant, the Mason City and Fort Dodge Railroad Company, by its solicitors and counsel, Frank B. Kellogg, James M. Woolworth, W. D. McHugh and C. A. Severance, and the defendant, the Union Pacific Railroad Company, by John N. Baldwin, its solicitor and counsel, and the said cause coming on to be heard upon the pleadings and proofs, and after hearing the same, and the arguments of the respective solicitors and counsel, it is

ORDERED, ADJUDGED AND DECREED :

That the complainant, its successors, lessees and assigns by virtue of the matters and things alleged in the bill of complaint, and sustained by the proof at the hearing, is entitled to be admitted into the full, equal and joint use of the main

and passing tracks of the Union Pacific Railroad Company, now located and established, or which may hereafter be located and established, from the eastern terminus of said tracks in Council Bluffs, in the State of Iowa, to a connection with the Union Stock Yards railroad and the other railroads connecting with the Union Pacific Railroad at South Omaha, in the State of Nebraska, *including* the bridge over which said tracks extend across the Missouri River between the cities of Council Bluffs, Iowa, and Omaha, Nebraska; also the connection with, and the tracks pertaining thereto, of the general passenger station of the said Union Pacific Railroad in Omaha, and said passenger station and all tracks and facilities connected therewith; also a connection with the side or spur tracks leading from the main line to the lower grade of the sidings and spur tracks in Omaha, and such extensions as may be hereafter made; also a connection with the side tracks in Omaha on which to receive from and deliver to said Union Pacific Railroad Company freight which may be handled through the warehouses, or may be switched by the said Union Pacific Railroad Company; also the connections with the Union Stock Yards tracks in South Omaha, and with the tracks of all other railway companies, which now or may hereafter connect at or near South Omaha, with the tracks of the Union Pacific Railroad Company hereinbefore described, each and all, to the same extent and upon the same terms and conditions stated in the contracts between the Union Pacific Railroad Company and the Chicago and Northwestern Railway Company, the Chicago, Milwaukee and St. Paul Railway Company, and the Chicago, Rock Island and Pacific Railway Company as appears by the contracts in evidence in this case, and the depot contracts, and the supplemental contract between the same parties, being Exhibits 6 and 7 attached to the bill of complaint herein, without preference or discrimination.

That the Mason City and Fort Dodge Railroad Company is entitled to connect its tracks with the said tracks of the

Union Pacific Railroad Company at the point in Council Bluffs, and in the manner shown upon the complainant's Exhibit No. 4 D, and forever maintain and operate the same.

That the Mason City and Fort Dodge Railroad Company is entitled to make such connections between tracks which it now owns or may hereafter acquire, and the tracks hereinbefore described of the Union Pacific Railroad Company, as shall be necessary or convenient in the operation of its own line, or as may be necessary or convenient in its business as a common carrier, and forever maintain and operate such connection. That if said Mason City and Fort Dodge Railroad Company and said Union Pacific Railroad Company cannot agree upon the points at which such connections shall be made, or to the manner of making the same, application may be made to the court from time to time in this case for supplemental decrees fixing said points of junction, and the manner of making such connections.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, its officers, agents, attorneys and employees be, and they hereby are, forever enjoined, prevented and restrained from interfering in any way with said full, equal and joint use of said property as aforesaid, by the complainant, its successors, lessees, and assigns, and the right to make said connections as aforesaid; and they are ordered, required and mandatorily enjoined to permit the free use and right as hereinbefore directed and stated, the compensation to be paid to the defendant to commence to accrue from the date the complainant commences the use of said property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a writ of injunction issue out of this court, enjoining the said defendant, its officers, agents, attorneys and employees from interfering in any way with the said full, equal and joint use of said property as in this decree allowed, and mandatorily enjoining them to permit the free use and right as hereinbefore directed and stated.

This Court further reserves the power and right and jurisdiction to make such further order and decree as become necessary and proper in the premises in the future.

That complainant is entitled to its costs and disbursements herein, to be taxed.

Dated, Omaha, August 12th, 1903.

W. H. MUNGER,
Judge.

Office Supreme Court U. S.

FILED

OCT 27 1911

JAMES H. McKENNEY,

Clerk.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1911.

No. 31

UNION PACIFIC RAILROAD COMPANY, A. L. MOHLER,
J. M. HENRY AND HENRY SWAGTEK,
Appellants,

vs.

MASON CITY AND FORT DODGE RAILROAD COM-
PANY,
Appellee.

Appeal from the United States Circuit Court of Appeals
For the Eighth Circuit.

BRIEF FOR APPELLEE.

JOHN BARTON PAYNE,
Counsel for Appellee.

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BOOK I

CHAPTER I

OF THE DEATH OF KING JAMES THE FIRST

THE DEATH OF KING JAMES THE FIRST, AND THE
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Appellants,

vs.

MASON CITY AND FORT DODGE RAILROAD COM-
PANY,

Appellee.

BRIEF FOR APPELLEE.

Appellants challenge a judgment of the Circuit Court of the United States for the District of Nebraska, finding the Union Pacific Railroad Company and certain of its employes guilty of contempt for the violation of an injunction issued pursuant to a decree of said court entered August 12, 1903 (124 Fed., 409), affirmed by the Circuit Court of Appeals for the Eighth Circuit (128 Fed., 280) and by this court, *Union Pacific Railroad Company v. Ma-*

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son City & Fort Dodge Railroad Company, 199 U. S., 160.

Appellee (complainant below) sued the Union Pacific to obtain the use of the bridge and terminals in Omaha and South Omaha, invoking the Acts of Congress and the decision of this court in *Union Pacific Company v. Rock Island Company*, 163 U. S., 564. A decree was entered in conformity with the prayer of the bill, and an injunction issued and served.

The question, therefore, is, did appellants violate the injunction when they by force prevented the Chicago Great Western Railway Company lessee of appellee from delivering a car of merchandise with its own engine from the tracks of the Union Pacific to the Rock Island Company where its tracks connect with the Union Pacific at South Omaha. In other words, by the terms of the decree of August 12, 1903, may appellee or its lessee use the tracks of the Union Pacific Company at South Omaha to deliver freight direct to the Rock Island Company, or is the right limited to the use of the bridge and its approaches merely as a means of passing over the bridge between Council Bluffs and Omaha?

Counsel for appellant say (Brief, 13):

“The question presented is whether the Mason City Company has the right to take a car from its freight yards at Omaha with its own engines upon and over the tracks of the Union Pacific down to the connection in South Omaha of the Rock Island with the Union Pacific and there deliver the car to the Rock Island Company.”

The question seems to have been conclusively settled by the decision of this court, and by the express terms of the decree in favor of the right of appellee to make the delivery. The first paragraph of the decree provides that complainant, its lessee, etc. (appellee), is (Trans., 1):

“Entitled to be admitted into the full, equal and joint use of the main and passing tracks of the Union Pacific Railroad Company now located or established, or which may be located and established from the easternly terminus of said tracks in Council Bluffs to a connection with the Union Stock Yards Railroad and the other railroads connecting with the Union Pacific Railroad at South Omaha.”

And in the fifth paragraph:

“Also the connections with the Union Stock Yards tracks in South Omaha, and with the tracks of all other railway companies which now or may hereafter connect at or near South Omaha with the tracks of the Union Pacific Railroad Company hereinbefore described, each and all to the same extent and upon the same terms and conditions stated in the contracts between the Union Pacific Railroad Company, the Chicago and Northwestern Railway Company, the Chicago, Milwaukee and St. Paul Railway Company and the Chicago, Rock Island and Pacific Railway Company.”

And in the sixth paragraph:

“That the Mason City and Fort Dodge Railroad Company is entitled to make such connections between tracks which it now owns, or may hereafter acquire, and the tracks hereinbefore described of the Union Pacific Railroad Company as shall be necessary or convenient in the operation of its own line, or as may be convenient or necessary in its business as a common carrier, and forever maintain and operate such connection.”

Not only therefore do the very comprehensive terms of the decree defeat the present contention of appellants, but appellant company is on record in this case by a formal petition admitting that the terms of the decree cover the point now claimed to be open.

After appellee filed its petition bringing the violation of the injunction to the attention of the court, appellant company without waiting to answer, filed an independent petition, (Trans., 22) an application for a modification of the decree alleged to have been violated, wherein it set up the decree, the service of the writ of injunction, and the affirmance by this court, and said (Trans., 27) :

“This defendant further shows to the court that the terms and conditions of the foregoing decree, and of the writ of injunction, with reference to the rights and privileges accorded to the said complainant in this case, are broader and more comprehensive than contemplated by the Bridge Act of 1871, or any of the contracts between this defendant and the Chicago & Northwestern Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, and the Chicago, Rock Island & Pacific Railway Company; * * * in this, to-wit: That the decree gives to the complainant a right of connection with ‘the other railroads connecting with the Union Pacific Railroad Company at South Omaha, in the State of Nebraska,’ and ‘with the tracks of all other railroads which now or may hereafter connect at or near South Omaha.’

* * * that by the terms of said decree the complainant is entitled to be admitted into the full, equal and joint use of the main and passing tracks of this defendant, now located and established, or which may hereafter be located

and established, from the eastern terminus of said tracks in Council Bluffs, in the State of Iowa, to a connection with the Union Stock Yards Railroad, and the other railroads connecting with this defendant at South Omaha, in the State of Nebraska, including the bridge; that said right of full, equal and joint use, as provided for by the terms of said decree is in excess of the rights contemplated by the Act of Congress of 1871, and is in excess of the rights and privileges guaranteed to the complainant by the terms of said act."

Thereafter on July 2, 1906, appellants answered (Trans., 31-32) admitting the use of force to prevent delivery of the car, but as a conclusion denied a violation of the injunction.

The Union Pacific Company (Trans., 38) in its answer said:

"The said complainant, or its lessee, attempted on the 27th day of April, 1906, to pass from the tracks of the Union Pacific Railroad Company directly onto and over the tracks of the Chicago, Rock Island & Pacific Railway Company's road at South Omaha, through and over a connection between the Rock Island and Union Pacific Railroad Companies' tracks, which had heretofore been made and constructed, under the terms of the contract between the Rock Island and Union Pacific Companies for the exclusive use of the Rock Island Company in the operation of its trains. The defendant further avers that at this time and on the occasion referred to the complainant was endeavoring to take one of its own cars from the tracks of this defendant to the tracks of the Chicago, Rock Island & Pacific Railway Company for the purpose of making delivery of the said car on the said tracks; all in violation of the said contracts and decree hereinbefore

referred to and in direct violation of the custom and practice hereinbefore set forth."

The Rock Island not only desired the delivery but was likewise forcibly prevented from making a similar delivery to appellee, appellant company going so far as to put a padlock on the switch.

In the answer of appellee (Trans., 42) to the petition to modify the decree, the point was made that the question was foreclosed by the decree and its affirmance by this court. In *re Sanford Fork & Tool Co.*, 160 U. S., 247.

After an exhaustive hearing, appellants were adjudged guilty of contempt. Munger, J. (Trans., 583), said:

"The defendant does not deny the specific act complained of, to-wit: preventing the complainant from running its engine and cars off from the track of the Union Pacific Railroad Company and onto the track of the Rock Island at South Omaha, but it contends that the order of this court heretofore entered did not require it to permit the complainant company to run its train and cars off from the road of the defendant company and onto the road of the Rock Island or any other road. Its contention is that the order of the court only required it to grant a physical connection between the track of the Union Pacific Railroad Company and the track of the Rock Island Company.

To this interpretation I cannot assent. The purpose of the Bridge Act as construed by the Supreme Court of the United States, was to enable a railroad company having a line of railroad upon one side of the Mississippi River at Council Bluffs or Omaha to use the portion of the defendant company's road between Council Bluffs and South Omaha in the operation of

its trains either as through trains upon its own lines owned and operated upon both sides of the river, or to operate its trains upon another connecting line upon the opposite side of the river as such different roads might agree upon. * * * the object and purpose of the Bridge Act, as construed by the Supreme Court, was to require the defendant company to permit the complainant company to enter with its trains upon its tracks at Council Bluffs, operate the same over the tracks of the Union Pacific to South Omaha, and pass upon the track of the Rock Island at South Omaha, if the Rock Island would permit it to use its tracks at South Omaha. To simply say that it meant a physical connection, only, between the track of complainant and the track of defendant, but did not permit the use of the defendant's track by the trains of the complainant to go upon the same at Council Bluffs and pass off from the same at South Omaha, either on its own or some other company's track, with which it had arrangements, would defeat the very purpose and intent of the act. * * *

THE PETITION TO MODIFY THE DECREE WAS DENIED.

As to the petition for a modification of the decree, the court said (Trans., 585):

"A petition and application for a modification of the former decree has been filed by the defendant company. * * * The decree cannot be modified to the extent that defendant asks. The decree as entered by this court has been affirmed by the Supreme Court and is beyond the power of this court to now modify, excepting as authorized by the Supreme Court. That court, in its opinion, says:

'It is contended that the terms of the decree are too broad; that they give to the Mason City Company not merely the use of the bridge and

its approaches, including therein connections with western roads terminating at Omaha, but also the use of all side or spur tracks connecting the Union Pacific Railroad with private industries, and the track extending northward from the main line of the Union Pacific to the old ferry crossing. On the argument the counsel for the appellee stated that his company made no claim to a right to use these tracks. If the language of the decree is open to this misconstruction, it should be corrected, and the Circuit Court may make such correction on proper application.' ” (199 U. S., 171.)

A disclaimer was filed by appellee (Trans., 46), disclaiming any right to the use of the side or spur tracks which connected with private industries or the track extending northward from the main line of the Union Pacific to the old ferry crossing.

A supplemental decree was entered modifying the decree accordingly (Trans., 586), and a judgment fining appellants one hundred dollars. This was affirmed by the Circuit Court of Appeals for the Eighth Circuit (Trans., 599, 165 Fed., 844).

The question here is, Shall this judgment be affirmed?

Counsel for appellants argue the case as if the question of the right of appellee to connect with the other roads at South Omaha was a new question and had not been decided by this court in the main case. Speaking of that case they say (Brief, 5):

“The opinion in 199 U. S., 160, was based *entirely* upon the proposition that the Mason City had a right to use the tracks and approaches to the bridge, *as an incident and only as an in-*

cident to the use of the bridge. That is to say this court did not undertake to say that the Mason City Company could use the tracks of the Union Pacific in Nebraska for the purpose of delivering to the Rock Island Company a car coming from the west for transportation to the west, the Missouri River bridge not being used or crossed by such car." (The italics are ours.)

A careful examination of the record will scarcely support this contention.

Because the terms of the decree affirmed makes no such limitation but covers the very point raised and is much broader than claimed by counsel; and the decree as well as the language of this court is in conflict with the contention.

Brewer, J. (171) said:

"It is contended that the terms of the decree are too broad; that they give to the Mason City Company not merely the use of the bridge and its approaches, including therein connections with western roads terminating at Omaha, but also the use of all side or spur tracks connecting the Union Pacific Railroad with private industries, and the track extending northward from the main line of the Union Pacific to the old ferry crossing. On the argument counsel for the appellee stated that his company made no claim to a right to use these tracks. If the language of the decree is open to this misconception it should be corrected."

The contention now made that the decree was too broad is therefore not new.

And the language of the court quoted above shows the right to connect with the other roads was expressly granted. The right to the use of the siding or spur tracks connecting the Union Pacific with

private industries, and the track extending northward to the old ferry crossing have never been claimed by appellee, but the contention by appellant that they were embraced in the decree shows how comprehensive in the opinion of appellants the language of the decree is. In other words, as affirmed by this court, it embraced the right to use the bridge, the approaches, the right to connect with other roads and the terminal facilities of the Union Pacific at Omaha and South Omaha, except the tracks covered by the disclaimer.

THE ROCK ISLAND CONTRACT.

Counsel for appellant appear to regard the contracts with the Rock Island and other companies as limiting the rights of appellee to the bridge and approaches, and to have contemplated only a passage across the Missouri River. This is a misconception. The contract with the Rock Island Company made May 1, 1890, the specific performance of which was decreed and the decree affirmed by this court in 163 U. S., 564, was much broader in its terms, and gave the Rock Island much more than merely the right to use the bridge and its approaches.

The contracts are in evidence in the main case and here by stipulation (Trans., 186) and were considered at length in *Union Pacific v. Rock Island Company*, 163 U. S., 564. In the statement of that case it is said (573):

“The contract provided: ‘The Pacific Company hereby lets the Rock Island Company into the full, equal, and joint possession and use of its main and passing tracks, now located and estab-

lished, or which may be hereafter located and established, between the terminus of such tracks in the City of Council Bluffs, in the State of Iowa, and a line drawn at a right angle across said tracks within one and one-half miles southerly from the present passenger station of South Omaha, in the State of Nebraska, including the bridge on which said tracks extend across the Missouri River, between said cities of Council Bluffs and Omaha; connections with Union Depot tracks in Omaha, the side or spur track leading from its main tracks to the lower grade of the Pacific Company's sidings and spur tracks in Omaha, and such extensions thereof as may be hereafter made; side tracks in Omaha on which to receive from and deliver to the Rock Island Company freight that may be handled through the warehouses, or switched by the Pacific Company; the connections with the Union Stock Yards tracks in South Omaha, and conveniently located grounds in South Omaha, on which the Rock Island Company may construct, maintain and exclusively use a track or tracks, aggregating three thousand feet in length, for the storage of cars and other purposes.' * * *

That 'schedules of rules and regulations for the movement of engines and trains over the several railways hereby let and demised shall be made for each railway by the duly authorized officers of the lessor and lessee companies, by which such railways shall at the time be operated. Such schedules shall, as nearly as may be practicable, accord equality of right, privilege and advantage to trains of the same class operated by the lessor and lessee.' "

The contract also contemplated the admission of other companies into a like joint use and possession upon substantially the same terms, provided such additional burden did not interfere with the Rock Island Company. (163 U. S., 575.)

And this court did not treat the contract as merely dealing with the bridge, but as a lease granting running or trackage rights.

Chief Justice Fuller (581) said:

"We may remark in the outset that the main contention of the Pacific Company concerns the tracks between Council Bluffs and South Omaha, including the bridge," and (582):

"Taking up the contract with the Rock Island Company what is the nature of the undertaking of the Pacific Company? In several places in this instrument it is called 'lease,' and the parties are 'lessor' and 'lessee,' while on the other hand, in the record of the proceedings of the executive committee of the Pacific Company, and of its stockholders, it is called an agreement 'granting trackage rights' between Council Bluffs and South Omaha."

In the contract the bridge was almost secondary.

THE RIGHT OF ROCK ISLAND COMPANY TO USE ITS OWN ENGINES EXPRESSLY RECOGNIZED.

Counsel for appellant likewise appear to misconceive the scope of the decision. They say (Brief, 16):

"It was something of a concession to the broad views of Congress that this court held that the necessary approaches to the Missouri River bridge covered a line of road four to five miles in length when used in connection with the transportation of cars and trains across the bridge, *but it is inconceivable that that policy should be extended so as to give the right to use that four miles of track for the local switching of cars of connecting lines with their own engines when such switching has nothing to do with the transportation of trains and cars across the bridge.*" (Italics ours.)

This construction would mean that the roads using the bridge and terminals of the Union Pacific could do so only as part of a through shipment, they could not use the terminals for making up their trains or for local business, but must permit the Union Pacific by reason of its occupation of the ground by virtue of the acts of Congress to enjoy a monopoly, and compel all other roads to employ the engines of the Union Pacific to move their cars, and this notwithstanding the language of the decree "the Mason City & Fort Dodge Railroad Company is entitled to make such connections * * * as shall be necessary or convenient in the operation of its own line or as may be necessary or convenient in its business as a common carrier."

Appellee could hardly perform its duty as a common carrier without the use of its engines.

Appellant has made this contention in this court before.

In this connection Chief Justice Fuller (163 U. S., 583) said:

"The Pacific Company in its answer said that it had offered and now offered 'to accept and transport all the cars and trains of the complainant, freight and passenger, to and from all points on the line of the said defendant described in said supposed contract, and thereby enable the complainant to maintain its business at Omaha and South Omaha, and to carry on exactly the same business that it could have carried on by the operation of its own trains, by its own engines and by its own employees, as provided for in said supposed contract.' It thus appears that the Pacific Company could do what it had

contracted to do, and that the contention resolves itself into the proposition that there is a fundamental legal difference between authorizing the Rock Island to haul its trains with its own engines, and agreeing to haul them with the Pacific Company's engines, though in either event they were to be moved under the train dispatchers of the Pacific Company—a difference we find ourselves unable to admit."

The chief justice then referred to *Rock Island v. Denver & Rio Grande*, 143 U. S., 596, and quoted from Mr. Justice Brown to the effect that it was obviously necessary to the harmonious working of the two systems that the general control and management of the yard remain with defendant, but it was not easy to see why that control might not be as well exercised over two switching crews belonging to two different companies as over two crews belonging to the same company, and that yards were jointly operated in this manner in other large railway centers. The chief justice, referring to the Rock Island contract, continuing said (584):

"Such being the nature of the contract, a contract frequently made between railroad companies, upon what reasonable ground should it be held invalid as an unlawful assumption of power? The evidence shows that between the bridge and South Omaha some of the most thickly populated and densely settled portions of the City of Omaha are situated. That five railroads engaged in transcontinental traffic do their terminal business there, taking up and setting down passengers, collecting, unloading and delivering freight; that a large part of the territory is filled with the tracks of the Union Pacific and Burlington Companies, and that there is scant room, if any, for another company with the many tracks required for terminal business;

that the whole territory is very valuable, densely populated and filled with tracks; and that at South Omaha are stock yards and packing industries of great extent furnishing the companies a vast volume of freight, and compelling the building of many tracks. If it were true that railroad companies could not ordinarily without the aid of a statute grant running facilities over their tracks even when such an arrangement would not interfere with their business, the application of so vigorous a rule to defeat a contract as between the parties in respect of tracks in the congested parts of large cities where the entire use of them is not required by their owners, does not seem reasonable. It is well said by Sanborn, J., speaking for the Circuit Court of Appeals: 'Courts cannot be blind to the fact that every railroad company cannot have entrance to our great cities over tracks of its own, or to the fact that railroad companies do, and every public interest requires that they should, make proper contracts for terminal facilities over the roads of each other.' "

In view of these quotations can it be said that the contracts between the Union Pacific and other companies referred to in the decree limit the rights conferred by the decree to the mere use of the bridge and approaches. Is it not, on the other hand, too clear for argument that the contracts afford the Rock Island and other tenant lines the "full, equal and joint possession and use" of the tracks in question, and the decree to appellee was intended to include and does include the terminal facilities necessary to deliver freight to the Union Stock Yards Company and all other railroad companies in South Omaha over the tracks of the Union Pacific Company?

II.

UNDER THE SECOND POINT (17) OF THE BRIEF FOR APPELLANTS, THEY INSIST THE COMPANY IS NOT ESTOPPED FROM CLAIMING THAT THE ONLY QUESTION ARISING IN AND DETERMINED BY THE SUIT IN WHICH THE DECREE OF AUGUST 12, 1903, WAS ENTERED, WAS WHETHER THE APPELLEE HAD THE RIGHT TO USE THE OMAHA BRIDGE AND TRACKS OF APPELLANT COMPANY IN COUNCIL BLUFFS, OMAHA AND SOUTH OMAHA FOR TRANSPORTATION ACROSS THE MISSOURI RIVER, AND THAT IT IS NOW FREE TO ASSERT THAT APPELLEE HAD NO RIGHT UNDER SAID DECREE TO USE THE TRACKS FOR THE LOCAL SWITCHING OF ITS TRAINS AND CARS IN NO WAY CONNECTED WITH THE PASSAGE ACROSS THE BRIDGE.

It will be well to keep in mind the precise question here involved, that is, was appellant right when it prevented by force the delivery of the carload of freight by appellee's lessee with its own engine to the Rock Island Company, and when it prevented a like delivery by the Rock Island Company to appellee and when it put a padlock on the switch and rendered such deliveries impossible?

Is the right to make such deliveries an open question as counsel contend, or has it been definitely and clearly adjudicated?

It is urged by counsel as a *reason* why the question was not adjudicated, that appellee then had no freight, or grain yard in Omaha, and therefore there was no opportunity to raise the question; this is wholly aside from the point because, the fact is the

court was advised of the growth and development of commerce in Omaha and anticipated the point now raised, the decree provided:

“That the Mason City Company is entitled to make such connections between tracks *which it now owns or may hereafter acquire* and the tracks hereinbefore described of the Union Pacific Company as shall be necessary or convenient in the operation of its own line or as may be necessary or convenient in its business as a common carrier and forever maintain and operate such connection.” (Trans., 1.)

The reason assigned being thus unfounded, let us see whether counsel are right in saying the point was not adjudicated. The fact is the decree in express terms answers the contention. It says that appellee is

“entitled to a full, equal and joint use of the main and passing tracks of the Union Pacific Company now located and established or which may hereafter be located and established from the eastern terminus of said tracks in Council Bluffs to a connection with the Union Stock Yards Railroad and the other railroads connecting with the Union Pacific Railroad at South Omaha, including the connections with the Stock Yards Company in South Omaha and with the tracks of the other railway companies which now or may hereafter connect at or near South Omaha with the tracks of the Union Pacific Company.”

It is clear that appellee was entitled to make the connection not only from the tracks owned when the decree was entered but those thereafter acquired to the full extent “necessary or convenient in the operation of its own line or as might be necessary or convenient in its business as a common carrier.”

Notwithstanding this, counsel still insist that the question of a connection with the other roads is open. They overlook the language of the injunction writ which covers the very point under discussion.

The injunction writ contains this language:

"That you (the Union Pacific Railroad Company, agents, etc.) are hereby strictly restrained and enjoined from interfering in any way with the full, equal and joint use by the Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns of the main and passing tracks of the Union Pacific Railroad Company now located and established or which may hereafter be located and established from the eastern terminus of said tracks in Council Bluffs in the State of Iowa, to a connection with the Union Stock Yards Railroad and the other railroads connecting with the Union Pacific Railroad at South Omaha in the State of Nebraska. * * * Also from in any manner interfering with the full, equal and joint use by the Mason City & Fort Dodge Railroad Company, its successors, lessees and assigns of a connection with the Union Stock Yards Railroad Company's tracks in South Omaha, and with the tracks of the other railroad companies which now or may hereafter connect at or near South Omaha with the tracks of the Union Pacific Company."

Even the ingenuity of the learned counsel will scarcely suggest that this does not cover the specific point under discussion, but counsel say the decree is too broad; that the only question involved in the original suit was the right of appellee to use the bridge and approaches, to enable appellee to reach the bridge, and inferentially contend that the broad language of the decree was merely an inadvertence

and the court did not mean to grant anything but the right to cross the bridge.

Let us examine this contention. In the brief filed by the learned counsel in this court in the main case when they sought to reverse the decree, they insisted that the decree was too broad, that it made the bridge a mere appurtenance to the right given appellee to have a connection with all other railroads in South Omaha. In their brief (pp. 134-5) they then said:

“The decree makes the bridge nothing but an appurtenance to a connection with South Omaha. Under what theory is the Pacific Company required to connect appellee’s tracks with the tracks of all other railroads in South Omaha? Do the court hold that this obligation is an appurtenance to a bridge miles away?”

To this counsel for appellee in reply said:

“It is objected that the Mason City Company is authorized to make connection with the other lines at South Omaha. We have seen that all the railways reaching Omaha from the west connect with the Union Pacific at this point. This was the very object Congress had in mind in the act of 1871 applying to the act of 1866. Instead, therefore, of granting the Mason City Company the use of the Union Pacific tracks to a definite point (*i. e.*, 1/2 mile south of the depot at South Omaha as was done in the Rock Island contract) the court very properly provided that the Mason City Company should enjoy the use of the tracks to a connection with the railway company connecting with the Union Pacific tracks to South Omaha.” (Reply brief in original case, pp. 28-29.)

Clearly therefore when this court affirmed the decree, it did so advisedly and not by inadvertence.

Counsel also say in their present brief (25):

"Now, of course, there was no reason and no opportunity in this original proceeding to put at issue any question of local switching, when no such claim was made by the complainant and when the tenant lines under their contracts had never claimed or exercised any such right. The decree * * * only gave the Mason City Company that which it asked for, viz., the right to use the bridge and approaches."

Counsel are perhaps misled by a failure to understand the local situation. The right of appellee to connect with the Union Stock Yards Railroad Company at South Omaha for all purposes is conceded, and yet the right to connect with this and the other roads is the same and is secured to appellee by the same paragraph of the decree, *i. e.*,

"and connection with the Union Stock Yards Railroad and the other railroads connecting with the Union Pacific, etc.," and

"also the connections with the Union Stock Yards track in South Omaha and with the tracks of all other railroad companies which now or may hereafter connect at or near South Omaha with the tracks of the Union Pacific."

This right is not only conceded but has been constantly practiced by appellee and all the tenant roads.

William Lee Park, General Superintendent of appellant company, under whose order the injunction was violated, testified as a witness for appellant, as follows (Trans., 162):

Examination by Mr. Kellogg:

"Q. You have always understood that all the roads had a right to connect with the Union

Stock Yards tracks, without any intervening switch over the Union Pacific?

A. I so understood their contract.

Q. They have always made such connections?

A. Yes, sir.

Q. For the purpose of delivering any freight to the Union Stock Yards Company, or to any industry on the track of the Union Stock Yards Railway Company?

A. That is my understanding; yes, sir.

Q. Whether the Union Stock Yards Company owned the industry or not?

A. Yes, sir.

Q. All industries on those tracks?

A. Yes, sir.

Q. The tenant roads have had a right to connect with?

A. So I understand.

Q. Did you know it gave the Great Western right to connect with the Rock Island in the same manner?

A. No; I did not.

Q. You did not look into that?

A. No, sir.

Q. Then, you are not prepared to give an opinion that the Great Western has not that right?

A. Not from my own knowledge; I have not read the decree."

The appellant, A. L. Mohler, General Manager of the Union Pacific Company, while a most unwilling witness, did not deny the right. He testified (Trans., 270):

By Mr. Kellogg:

"Q. You do not deny the right of the Great Western to make connections with the Union Stock Yards' tracks, do you?

A. Whatever the decree, whatever the contracts, call for with the tenant lines, and upon

which lines I understand your decree was issued, that you were to have the same rights, no more and no less,—that is my interpretation of the Chicago Great Western decree.

Q. That is not in answer to my question. I ask you if it is not a fact that the Great Western has always made connections with the Union Stock Yards tracks direct?

A. I will have to make the same reply to you that I did before.

Q. You know they have, don't you?

A. They make the same connections that the other tenants make.

Q. Very well. They all make connections with the Union Stock Yards direct?

A. Same as the others make.

Q. They all make connections with the Union Stock Yards' tracks, don't they?

A. Supposed to do; they have a right to."

Appellant Henry, assistant yard master, said (Trans., 171):

"Q. You know that all of these tenant roads, and the Great Western included, deliver freight to the Union Stock Yards tracks, and to all industries on those tracks, without any intermediate switching by the Union Pacific, don't you?

A. They do.

Q. And in delivering all this freight, they run onto the tracks of the Union Stock Yards Company with their own engines?

A. Yes, sir."

If the other roads did not make deliveries to each other, as appellee sought to do to the Rock Island, it was because there was no need. There exists a series of tracks in South Omaha called "the pool" through which the other roads make deliveries, but whether they did or not is immaterial since their right, and that of appellee to do so, is clear and cannot be properly refused, and since the *right* to

connect with the Stock Yards tracks is identical with the right to connect with the Rock Island and other roads, it is impossible to concede the one and deny the other.

III.

The question involved here is vital to appellee. The contention of appellant comes to this: That except in the movement of a through train across the Missouri River, appellee is not entitled to use its own engines in the making up of its trains or in the delivery of carloads of freight, but must employ the engines of the Union Pacific Company to do so. For this service the Union Pacific charges according to the district, from \$2 to \$4 per car (see the Tariff Sheet, Exhibit 13, Trans., 452). This right would give the Union Pacific a monopoly and drive appellee and its lessee, the Great Western Company, out of the field and defeat the purpose of the Congress in enacting the legislation.

Mr. A. B. Stickney, president of the Great Western at the time this case was tried, shows (Trans., 280-281) that the contention of appellants would involve a useless duplication of switching and the use of seven and one-half miles of the Union Pacific tracks as against the present use of a mile and a quarter, and corresponding increase in expense. The question therefore is not merely the vindication of a principle but an effort of appellants to monopolize the business. The decree should be affirmed.

Respectfully submitted,

JOHN BARTON PAYNE,
Counsel for Appellee.

Office Supreme Court U. S.

FILED

OCT 31 1911

JAMES H. MCKENNEY,

Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1911.

No. 31

UNION PACIFIC RAILROAD COMPANY, A. L. MOHLER,
J. M. HENRY AND HENRY SWAGTEK,

Appellants,

vs.

MASON CITY AND FORT DODGE RAILROAD COMPANY,

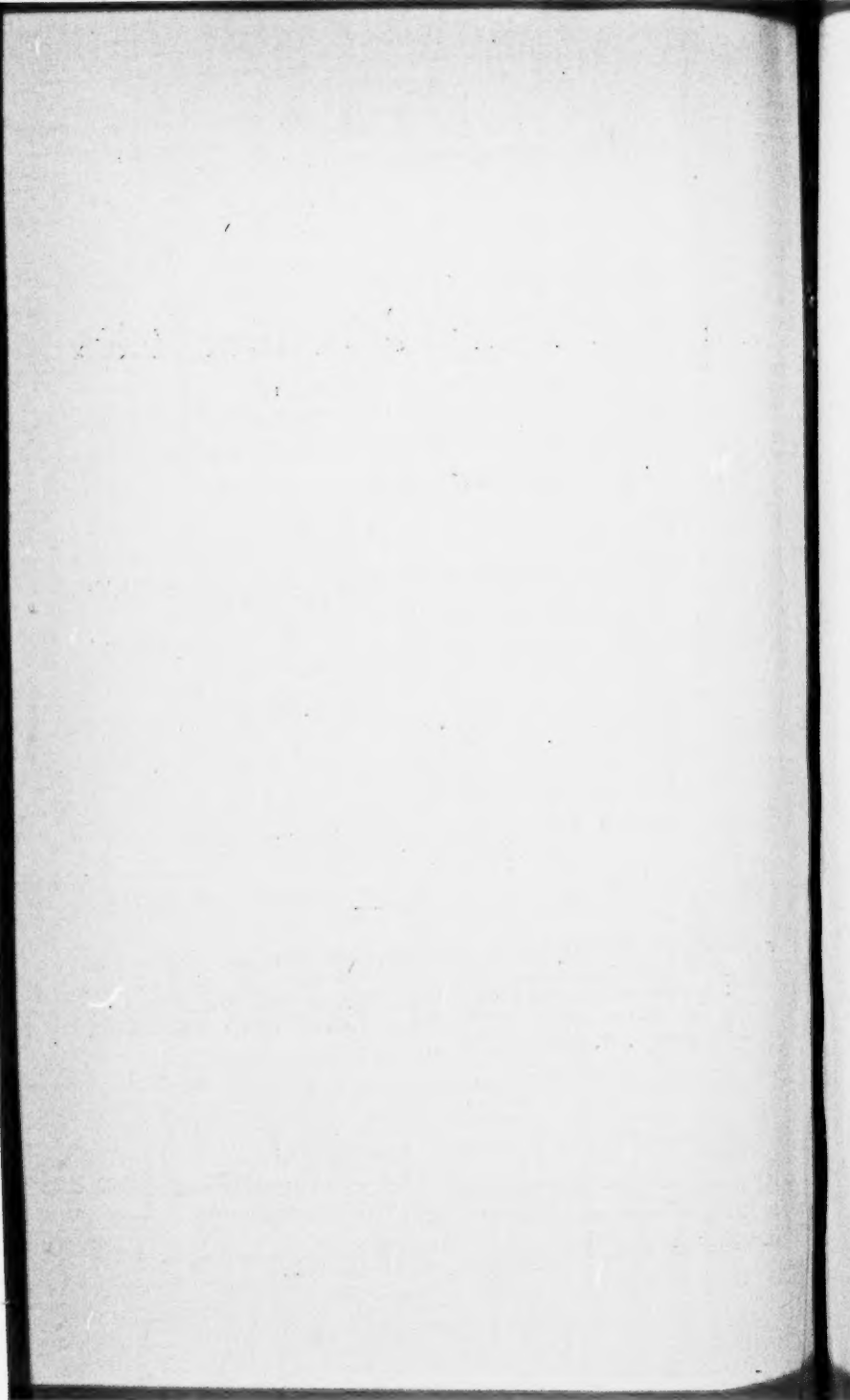
Appellee,

Appeal from the United States Circuit Court of Appeals
For the Eighth Circuit.

**EXTRACTS FROM BRIEF OF MESSRS. MAXWELL EVARTS
AND JOHN N. BALDWIN, COUNSEL FOR UNION PACIFIC
RAILROAD COMPANY, USED UPON THE HEARING IN
THE MAIN CASE, OCTOBER TERM 1905, REPORTED
IN 199 U. S. 100.**

JOHN BARTON PAYNE,

Counsel for Appellee.



THE FOLLOWING EXTRACTS FROM BRIEF OF MESSRS. MAXWELL EVARTS AND JOHN N. BALDWIN OF COUNSEL FOR UNION PACIFIC R. R. CO. USED IN THEIR EFFORT TO REVERSE THE DECREE NOW INVOLVED HEREIN WILL SHOW HOW FULLY THE QUESTIONS DISCUSSED IN THE PRESENT BRIEF WERE CONSIDERED BY THE COURT IN 199 U. S., 160.

Union Pacific Railroad Com-	}
pany,	
<i>Appellant,</i>	
v.	
Mason City and Fort Dodge	
Railroad Company,	}
<i>Appellee.</i>	

“STATEMENT OF CASE.

(p. 1) “This is a suit in equity brought by the Mason City & Fort Dodge Railroad Company, a corporation organized under the laws of the State of Iowa, appellee, against the Union Pacific Railroad Company, a corporation organized under the laws of the State of Utah, appellant, in which appellee prayed for a decree ordering appellant to admit appellee into the full, equal and joint use with other railroad companies of the main and passing tracks of appellant then located or established between the eastern terminus of appellants’ tracks in the City of Council Bluffs, Iowa, and the City of South Omaha, Nebraska, including the bridge over which said tracks extend across the Missouri River between the Cities

of Council Bluffs and Omaha; also of the side and spur tracks leading from the main tracks; also of the passenger station of appellant in the City of Omaha, and tracks and facilities connected therewith, and in general all the tracks and sidetracks, stations and terminal facilities belonging to the appellant at and between the Cities of Council Bluffs, Iowa, and Omaha, and South Omaha, Nebraska."

SPECIFICATION OF ERRORS (p. 23.)

"Appellant alleges that the Circuit Court of Appeals erred in the following particulars and specifies errors as follows:

IV.

"In holding that the Mason City and Fort Dodge Railroad Company was entitled under said acts to go over and across the bridge of the Union Pacific Railroad Company, and to use with other railroads the main and passing tracks of the appellant, located or established or to be located and established between the City of Council Bluffs, in the State of Iowa, and the City of South Omaha, in the State of Nebraska, and also the terminal facilities in said cities."

V.

"In holding that the Mason City and Fort Dodge Railroad Company was entitled to the use of the tracks and terminal facilities of the Union Pacific Railroad Company beyond and west of 20th street in the City of Omaha, Nebraska."

UNDER THEIR FIRST POINT (p. 82) they said:

“We are met now with the startling and amazing proposition that under this act, this mortgage and this description, not only is the appellee entitled to the bridge and facilities, to 20th street, in the City of Omaha, but all of the property of appellant from thereon through Omaha and into South Omaha, four and a half miles distant therefrom, and even one and one-half miles further on south and west from South Omaha to the town of Gilmore.”

FOURTH POINT (p. 128).

“THE MASON CITY & FORT DODGE RAILROAD COMPANY WAS NOT ENTITLED TO USE AND OCCUPY ANY OF THE PREMISES OF THE APPELLANT THE UNION PACIFIC RAILROAD COMPANY UPON THE TERMS OF ANY OF THE CONTRACTS BETWEEN THAT COMPANY AND OTHER RAILROADS.”

“The lower court in its decree gave to the appellee the same rights which the Pacific Company has granted by contract to the Rock Island and Milwaukee Companies. This was manifestly error and without any possible authority under the statutes relied on by appellee.

“An examination of the Rock Island contract and the decree will show this court that the decree was taken bodily from the contract with certain additions thereto which were suggested by a contract entered into between the Pacific Company and the Northwestern Company.

“Below will be found the important provisions of

the decree and contract, placed side by side in parallel columns for the purpose of examination and comparison:

ROCK ISLAND CONTRACT.

"The full, equal, joint possession and use of its main and passing tracks now located and established, or which may hereafter be located and established between the terminus of said tracks in the City of Council bluffs, in the State of Iowa, to a line drawn at a right angle across said tracks, within one and one-half ($1\frac{1}{2}$) miles southerly of its passenger station at South Omaha in the State of Nebraska, including the bridge over which said tracks extend across the Missouri River between the City of Council Bluffs and Omaha;

connection with the Union Depot tracks in Omaha;

DECREE.

"The full, equal and joint use of the main and passing tracks of the Union Pacific Railroad Company now located and established, or which hereafter be located and established from the eastern terminus of said tracks in Council Bluffs, in the State of Iowa, to a connection with the Union Stock Yards railroad and the other railroads connecting with the Union Pacific Railroad at South Omaha, in the State of Nebraska, including the bridge over said tracks extend across the Missouri between the cities of Council Bluffs, Iowa, and Omaha, Nebraska.

also the connection with, and the tracks pertaining thereto, of the General Passenger Station of the said Union Pacific Railroad in Omaha, and said passenger station and all tracks and facilities connected therewith;

the side or spur track leading from its main track to the lower grade of the Pacific Company's sidings and spur tracks in Omaha, and such extensions as may be hereafter made;

and side tracks in Omaha on which to receive from and deliver to the party of the second part (Rock Island Company), freight that may be handled through the warehouses or switched by the party of the first part (Pacific Company);

the connections with the Union Stock Yards tracks in South Omaha, and conveniently located grounds in South Omaha, on which the party of the first part (Rock Island Company) may construct, maintain and exclusively use, a track or tracks, aggregating 3000 feet in length for the storage of cars and other purposes;

also a connection with the side or spur track leading from the main line to the lower grade of the sidings and spur tracks in Omaha, and such extensions as may be hereafter made;

also a connection with the side tracks in Omaha on which to receive from and deliver to said Union Pacific Railroad Company freight which may be handled through the warehouses, or may be switched by the said Union Pacific Railroad Company;

also the connections with the Union Stock Yards tracks in South Omaha, and with the tracks of all other railway companies, which now or may hereafter connect at or near South Omaha with the tracks of the Union Pacific Railroad Company hereinbefore described, each and all, to the same extent and upon the same terms and conditions, stated in the contracts between the Union Pacific Railroad Company and C. & N. W. Ry. Co. and C. M. & St. P. Ry. Co. C. R. I. & P. Ry. Co. as appears by the contracts in evidence

in this case, and the depot contract and the supplemental contract between the same parties, being Exhibits Nos. 6 and 7, attached to the bill of complaint herein without preference or discrimination.

That the Mason City and Fort Dodge Railroad Company is entitled to connect its tracks with the said tracks of the Union Pacific Railroad Company at the point in Council Bluffs, and in the manner shown upon the complainant's exhibit No. 4d, and forever maintain and operate the same.

The Rock Island Company shall have the right to make such connections between its own tracks and the leased tracks of the Pacific Company as shall be necessary or convenient in the operation of its own line or lines in connection with such leased tracks; or to the conduct of its business as a common carrier.

That the Mason City and Fort Dodge Railroad Company is entitled to make such connections between tracks which it now owns or may hereafter acquire, and the tracks hereinbefore described of the Union Pacific Railroad Company as shall be necessary or convenient in the operation of its own line or as may be necessary or convenient in its business as a common carrier, and forever maintain and operate such connection (Rec., p. 261).

“Appellee bases its right to relief upon the act of 1871, as construed by this court in the Rock Island case.

“Turning to that case, what do we find? It holds under the act in question? ‘The determination of the existence of the power to grant *running rights*.’

“The Pacific Railroad Acts * * * imposed * * * the duty of permitting the Rock Island Company to run its engines, cars and trains over the bridge, and the tracks between Council Bluffs and Omaha, and we think that South Omaha was included.”

“The opinion holds that the right to use the bridge would include the right to use the approaches there-to, the tracks to the depot (which tracks would include only such tracks as connect the bridge with the depot), the depot itself, and the tracks connecting the depot with South Omaha. That is all. We have hereinbefore discussed appellee’s right to go to Omaha, and so will pass that in the present discussion. Giving appellee everything the Supreme Court in the Rock Island case held the Rock Island Company entitled to under the Pacific Railroad Acts, then appellee would be entitled to have ‘the use of the bridge, the approaches, tracks, depots and other facilities for the public accomodation.’ (Opinion, p. 588.)

“It is further stated in said opinion

“A railroad bridge can be of no use to the public unless united with necessary appurtenances.” (p. 588.)

“This depends entirely upon what is to be included in the words ‘necessary appurtenances.’ The Supreme Court, referring to the words ‘necessary ap-

purtenances' has held that this includes 'approaches, tracks, depots and other facilities for the public accommodation.' We earnestly deny this proposition. Railroad bridges are often used by carriers, who are not the owners thereof for the purpose of crossing rivers and making connections merely, and the bridges can be and are of use to the public when only the bridges themselves and the approaches thereto are used by said carriers and without the use of depots and other facilities. It does not necessarily follow that such carriers are entitled to depot and other facilities, either connected with or distant from the bridge. It is common knowledge that a number of railroad bridges in this country are used by other railroad companies than the owners, which other railroad companies do not ask for nor receive any depot or other facilities in connection therewith. Taking this very bridge in question, the Burlington Road uses the bridge proper and its approaches, but has no connection whatever with the Union Pacific tracks, or depots, either in Council Bluffs or Omaha, or other facilities. The Burlington Company has a depot of its own in Omaha, and it is clear that the use of the Union Depot there is not all necessary or appurtenant to its (the Burlington Company's) use of the bridge.

But the opinion says the Act refers to "the tracks and depots required to perfect the same." That must mean the bridge, and cannot possibly refer to the Omaha and South Omaha depots, and the tracks necessary to perfect these depots. It was not found necessary to erect any depots to perfect the bridge, nor have any ever been erected. But

granting to appellee everything that the Rock Island case gives to it, placing any strained construction possible on the language above quoted, where does the court find authority to give to appellee the "full, equal and joint use of the main and passing tracks of the Union Pacific Road?" Why should appellee have the full and equal use with the Pacific Company of the main tracks, and why should it have any use of the passing tracks? And the decree gives appellee not only such tracks as the Pacific Company now has, but all which it may hereafter locate or establish between the Eastern terminus of its tracks in Council Bluffs to a connection with the Union Stock Yards railroad in South Omaha, and all the other railroads connecting with the Union Pacific at South Omaha. The decree gives appellee so much that the bridge becomes merely an incident and almost overlooked, but is finally tacked on in the following language, "including the bridge."

"The decree makes the bridge nothing but an appurtenance to connection with South Omaha. Under what theory is the Pacific Company required to connect appellee's tracks with the tracks of all the other railroads in South Omaha? Will the court hold that this obligation is an "Appurtenance" to a bridge miles away?

"The court in its decree lost sight of the bridge entirely, as well as any construction of the Pacific Bridge Acts, because it had in mind always the Rock Island contract, which granted "connections with the Union Depot tracks in Omaha" the decree even goes

far beyond the contract for it provides (Rec., p. 261),

“also the connection with, and the tracks pertaining thereto, of the General Passenger station of the said Union Pacific Railroad in Omaha, and said passenger station, and all tracks and facilities connected therewith.”

Then the decree, taking up the text of the contract and almost in the identical words thereof, provides (Rec., p. 262):

“Also a connection with the side or spur track leading from the main line to the lower grade of the sidings and spur tracks in Omaha, and such extension as may be hereafter made; also a connection with the side tracks in Omaha on which to receive from and deliver to said Union Pacific Railroad Company freight which may be handled through the warehouses or may be switched by said Union Pacific Railroad Company.”

The decree then takes up the situation at South Omaha and by a broad sweeping provision incorporates by reference all the contracts the Pacific Company has ever made with other companies, and finally, still using the Rock Island contract as a model, copies the final provision therein, almost word for word in the following language:

“That the Mason City and Fort Dodge Railroad Company is entitled to make such connections between tracks which it now owns or may hereafter acquire, and the tracks hereinbefore described of the Union Pacific Railroad Company, as shall be necessary or convenient in the operation of its own line or as may be necessary or convenient in its business as a common carrier and forever maintain and operate such connection.”

What will be the effect of all this? The answer is, that undoubtedly the Mason City Company, with this decree, will be able to make and enforce demands upon the Pacific Company which other railroad companies, under their contracts, could not possibly demand. For illustration, the Pacific Company might have a track running along side of business houses and industrial concerns; under the decree the Mason City Company could build a track of its own between such concern and the Pacific Company's track and thus absolutely prevent it from conducting any operations or business with such concerns, and yet compel it to connect said Mason City Company's tracks with the Pacific Company's track at either end.

If the Pacific Company builds a track to any part of the business district of Omaha, no matter at what cost and expense, that moment the Mason City Company demands connection with such track and proceeds to gather in the business by its historic methods. The duty of a court of equity is to protect vested rights, not destroy them; to stand as a shield against injustice which the courts of law cannot prevent. Instead of this it is taking away from the appellant its right of contract and imposing burdens upon it which no board of directors, having in mind the best interest of their company would dream of undertaking. The decree should have been drawn with due regard to the law of the case, and not fashioned after an improvident contract which the predecessor of this company had entered into and which this company was obliged to assume and carry out."

UNION PACIFIC RAILROAD COMPANY *v.* MASON
CITY AND FORT DODGE RAILROAD COM-
PANY.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE
EIGHTH CIRCUIT.

No. 31. Argued November 2, 1911.—Decided December 11, 1911.

The object of the provisions in acts of July 25, 1866, 14 Stat. 244, c. 246, and of February 24, 1871, 16 Stat. 430, c. 67, for the construction of railway bridges across the Mississippi and Missouri rivers was that the trains of all railroads terminating at the rivers should be allowed to cross on reasonable terms, and for the more perfect connection of railroads running to the bridges on either side of the river; and, the statutes being construed in that light, the approaches on both sides of the river must be regarded as parts of the structures.

A railroad bridge can be of no use to the public unless united with the necessary appurtenances for public accommodation.

A distance of four miles in the scheme of the Union Pacific Railroad may be reasonably within the expression "at or near."

The decree of the Circuit Court affirmed by this court in 199 U. S. 160, gave to the Mason City and Fort Dodge R. R. Company the right to cross the Union Pacific bridge over the Missouri river and this included the use of main and passing tracks over and approaching the bridge to the extent necessary to constitute a continuous line from the terminus at Council Bluffs to the point at Omaha mentioned therein, but the decree did not give the Mason City Road any rights to use other tracks and terminal facilities of the Union Pacific Railroad.

165 Fed. Rep. 844, reversed.

THE facts, which involve the construction of a decree of the Circuit Court in regard to the joint use of railroad tracks between Omaha and Council Bluffs, are stated in the opinion.

Mr. Maxwell Evarts, with whom *Mr. N. H. Loomis* was on the brief, for appellants.

Mr. John Barton Payne for appellee.

MR. JUSTICE MCKENNA delivered the opinion of the court.

The question in the case is whether the decree of the United States Circuit Court for the District of Nebraska, rendered in a suit brought by appellee against the Union Pacific Railroad Company in 1903, which adjudged to appellee and to its lessee, the Chicago Great Western Railway Company, the equal and joint use of the main and passing tracks of the Union Pacific, means the use of such tracks in connection with the bridge of that company over the Missouri river between Omaha and Council Bluffs, or the tracks independently of such use, or, in other words, a general use of the tracks for business having no connection with the bridge or use of it, or, to be more specific and to bring forward the particular use claimed, whether, as facilities for elevators established by appellee in Omaha "and generally for a grain terminal," or as shall be necessary or convenient in its business as a common carrier, it may operate its own motive power and use the tracks of the Union Pacific to deliver cars to the Chicago, Rock Island & Pacific Railroad, which has connection with the tracks of the Union Pacific. The appellee contends that such right is given by the decree. The appellants assert that the Union Pacific alone has the right to deliver cars to appellee's property or take them from it to connecting carriers, as it does, it is contended, for all other railroads, according to contracts which have obtained for many years.

The Circuit Court decided that the decree gave the use, contended for by the appellee, and adjudged appellants guilty of contempt for obstructing such use. The decision was affirmed by the Circuit Court of Appeals. 165 Fed. Rep. 844.

The decree adjudged that appellee and its lessee, the Chicago Great Western Railway Company, were "admitted into the full, equal and joint use of the main and passing tracks of the Union Pacific Railroad Company, now located and established, or which may hereafter be located and established, from the eastern terminus of said tracks in Council Bluffs, in the State of Iowa, to a connection with the Union Stock Yards Railroad and the other railroads connecting with the Union Pacific Railroad at South Omaha, in the State of Nebraska, including the bridge over which said tracks extend across the Missouri River between the cities of Council Bluffs, Iowa, and Omaha, Nebraska; also the connection with, and the tracks pertaining thereto, of the general passenger station of the said Union Pacific Railroad in Omaha, and said passenger station and all tracks and facilities connected therewith; also a connection with the side or spur tracks leading from the main line to the lower grade of the sidings and spur tracks in Omaha, and such extensions as may be hereafter made; also a connection with the side tracks in Omaha on which to receive from and deliver to said Union Pacific Railroad Company freight which may be handled through the warehouses, or may be switched by the said Union Pacific Railroad Company; also the connections with the Union Stock Yards tracks in South Omaha, and with the tracks of all other railway companies which now or may hereafter connect at or near South Omaha, with the tracks of the Union Pacific Railroad Company hereinbefore described, each and all, to the same extent and upon the same terms and conditions stated in the contracts between the Union Pacific Railroad Company and the Chicago & Northwestern Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, and the Chicago, Rock Island & Pacific Railway Company, as appears by the contracts in evidence in this case, and the depot contract, and the supplemental con-

tract between the same parties, being Exhibits 6 and 7, attached to the bill of complaint herein, without preference or discrimination."

It is manifest that the rights of appellee and its lessee company which were adjudged by the decree are measured by the rights of the other railroads mentioned in the decree, and what they were are defined in certain cases in which they came up for consideration.

The first of the cases was *Union Pacific Railway Co. v. Chicago, Rock Island & Pacific Railway Co.*, 163 U. S. 564. It was brought by the Chicago, Rock Island & Pacific Railway Company against the Union Pacific Railroad Company to compel specific performance of a contract in regard to the use of the tracks of the latter. The following is a summary of the facts: The Union Pacific Company controlled and operated more than five thousand miles of railroad, and, among others, a main line extending from Council Bluffs, Iowa, by way of Omaha and Valley Station, Nebraska, to Ogden, Utah, a distance of about eleven hundred miles, and other roads not necessary to mention.

The Rock Island Company owned and operated a line of railway extending from Chicago, by way of Davenport, Iowa, to St. Joseph, Missouri, and thence, through certain points, to Colorado Springs and Denver. It also operated other lines, amounting in the aggregate to more than three thousand miles. The St. Paul Company was operating more than six thousand miles of railroad, and one of its lines extended from Chicago to Council Bluffs.

The Rock Island Company determined to connect its lines from Chicago to Council Bluffs with its southerly line to Colorado Springs by constructing a bridge across the Missouri river at Council Bluffs and a railroad from that terminus, by way of Omaha and South Omaha and other points, thereby shortening its line from Chicago to Denver. The St. Paul Company joined in the under-

taking in order to extend its line from Council Bluffs on to Omaha and South Omaha. The two companies, to execute their purpose, caused a corporation to be created under the laws of Iowa, with power to build a bridge across the river at Omaha, Congress granting to the corporation the necessary franchise. Act of June 12, 1884, 23 Stat. 43, c. 82. Pending the making of the surveys and other preparations, the Union Pacific Company proposed to the companies to make with them a trackage arrangement by which they could use the bridge and tracks of the Union Pacific Company between Council Bluffs and South Omaha for their terminal facilities in Omaha and South Omaha, and the continuous line desired by the Rock Island Company could be completed. The proposal was accepted and the contracts subsequently drawn. The preamble to the Rock Island Company contract recited that that company had become a domestic corporation of Nebraska, and proposed to extend its railway from its terminus at Council Bluffs to a connection with its leased line, the Chicago, Kansas & Nebraska Railway, at the city of Beatrice; that the parties to the contract believed that the interests of all would be promoted by using for a part of said extension the main tracks of the Union Pacific Railway Company in the cities of Council Bluffs and Omaha, the bridge over the Missouri river and portions of certain other roads not necessary to mention.

The specific and material provision was as follows, the italics being ours: "The Pacific Company hereby lets the Rock Island Company into the full, equal and joint possession and use of its *main and passing tracks*, now located and established, or which may be hereafter located and established, between the terminus of such tracks in the city of Council Bluffs, in the State of Iowa, and a line drawn at a right angle across said tracks within one and one half ($1\frac{1}{2}$) miles southerly from the present passenger station of South Omaha, in the State of Nebraska, includ-

ing the *bridge* on which said tracks extend across the Missouri River, between said cities of Council Bluffs and Omaha; *connections* with Union Depot tracks in Omaha, the side or spur track leading from its main tracks to the lower grade of the Pacific Company's sidings and spur tracks in Omaha, and such extensions thereof as may be hereafter made; side tracks in Omaha on which to receive from and deliver to the Rock Island Company freight that may be handled through the warehouses, or switched by the Pacific Company; *the connections* with the Union Stock Yards tracks in South Omaha, and conveniently located grounds in South Omaha, on which the Rock Island Company may construct, maintain and exclusively use a track or tracks, aggregating three thousand (3,000) feet in length, for the storage of cars and other purposes, for the term of nine hundred and ninety-nine (999) years." The consideration is expressed, and it is provided "that the Pacific Company lets the Rock Island Company into the full, joint and equal possession and use of its tracks, stations and appurtenances along the line of the railway of the Republican Valley Company," the Pacific Company reserving the right to admit any other company to the joint use and possession of the same tracks and property upon substantially the same terms.

Performance of the contract was entered into. Subsequently a change of management of the Pacific Company took place, and that company forcibly prevented the Rock Island Company and the St. Paul Company from using the tracks at Omaha, which they were entitled to use under the contracts, and absolutely refused to perform the contracts.

Suit was then brought by those companies to compel specific performance of the contracts, and the Pacific Company set up as a defense that the contracts were *ultra vires*, and that the use of its road, as claimed, would deprive it of the means granted to it by the act of Congress,

of earning money with which to maintain its corporate existence, perform the duties of a common carrier and meet the demands of the Government. The defenses were not sustained, and it was decreed that the contract was "the valid obligation of the parties thereto, and should be performed in good faith by each of them;" that it secured the several rights embraced therein, all of which were specifically set forth, subject to certain limitations which need not be given. 47 Fed. Rep. 15. The decree was affirmed by the Circuit Court of Appeals. 51 Fed. Rep. 309.

The case in this court was considered on the appeal of the Rock Island Company, the court saying that if the decree in favor of that company be affirmed a like result must follow in the case of the St. Paul Company, and stated the questions to be (p. 580) "whether these contracts are within the corporate powers of the parties; were duly authorized as respects the Union Pacific Railway Company; were such contracts as a court of equity can specifically enforce; and were properly enforced on the merits." More specifically, it was said (p. 581) that it could be remarked "in the outset that the main contention of the Pacific Company concerns the tracks between Council Bluffs and South Omaha, including the bridge." This, then, we must accept as the subject of the controversy to which the court addressed itself and by which the decision must be explained.

It was decided that the contracts were not *ultra vires*, the court basing its decision upon the general powers of the Pacific Company in relation to the subject-matter and its duties as a common carrier, and decided that there was no reasonable ground upon which it could "be held invalid as an unlawful assumption of power." But the court, going beyond such general operation and relation, said: (p. 585) "But the determination of the existence of the power to grant running rights in this instance does not rest on these considerations," and based its decision

as well upon the provisions of the Pacific Railroad acts relating to the bridge over the Missouri river and its construction and operation, holding that those acts "imposed on the Pacific Company the duty of permitting the Rock Island Company to run its engines, cars and trains over the bridge and tracks between Council Bluffs and Omaha." And the court said (p. 586) "that South Omaha was included."

These propositions were announced: The original charter of 1862 required the construction of the Pacific road from the east bank of the river, and so impliedly authorized the company to bridge it. The implication was made express by the amendatory act of 1864, and the company given authority "to construct a bridge over said Missouri river." The bridge was for the company's road, and no provision was made for other roads, nor were special means provided for the construction of the bridge. By 1871, several roads had been built from the East to Council Bluffs, and others were in process of construction in Nebraska, with Omaha as their terminus. On February 24 of that year the Omaha Bridge Act was passed (February 24, 1871, 16 Stat. 430, c. 67), in which it was provided that "for the more perfect connection of any railroads that are or shall be constructed to the Missouri river, at or near Council Bluffs, Iowa, and Omaha, Nebraska," the company was authorized to issue bonds not exceeding two and one-half million dollars and to "secure the same by mortgage on the bridge and approaches and appurtenances, as it may deem needful to construct and maintain its bridge over said river, and the tracks and depots required to perfect the same, as now authorized by law of Congress."

The act further provided that for the use and protection of the bridge and property the company should be governed and limited by the act of Congress of July 25, 1866, 14 Stat. 244, c. 246, in regard to the construction of cer-

tain bridges and to establish them as post roads. Nine bridges were authorized by that act to be constructed, eight over the Mississippi river and one over the Missouri river, and it was provided in § 1 of the act which authorized the construction of the bridge across the Mississippi at Quincy, Illinois, that when constructed the trains of all railroads terminating at the river should be allowed to cross, for reasonable compensation to be made to the owners of the bridge. This provision was made applicable to the other bridges.

The court said (p. 587): "The common object of both these acts plainly was the more perfect connection of roads running to the bridges on either side of the river;" and this, it was further said, was in harmony with the numerous acts of Congress referred to in the opinion of the Circuit Court of Appeals.

Answering the objection that if these acts justified the granting of the use of the bridge it did not justify the granting of the use of the tracks, the court remarked that the authority was given to place a mortgage "on the bridge and approaches and appurtenances," and that it would seem clear that the approaches on both sides of the river must be regarded as a part of the structure. And it was further said (p. 588): "Moreover, the act refers to 'the tracks and depots required to perfect the same.' A railroad bridge can be of no use to the public unless united with necessary appurtenances, such as approaches, tracks, depots and other facilities for the public accommodation. And we consider Council Bluffs, Omaha and South Omaha, under the facts, as necessarily embraced in the intention of Congress. It is true that it appears that from the depot to the point in South Omaha where the tracks of the companies connected, is about four miles; but the scheme of Congress was to accomplish the more perfect connection 'at or near Council Bluffs, Iowa, and Omaha, Nebraska,' and we think this distance reasonably within the terms

of the act of 1871, liberally construed, as the act should be."

The next case which came to this court was *Union Pacific Company v. Mason City Company*, 199 U. S. 160. The Mason City Company was complainant in the suit in the Circuit Court, and operated a railroad having its western terminus at Council Bluffs, and sought in that suit to connect with and use the bridge, approaches and tracks of the Union Pacific Company upon the same terms and conditions as the roads which were parties to the suit in 163 U. S., *supra*. It based its claim upon the acts therein set out and considered, it having no contract with the Union Pacific as the other railroads had. The Circuit Court and the Circuit Court of Appeals sustained its claim. 124 Fed. Rep. 409; 128 Fed. Rep. 230.

In this court, the Mason City Company contended that its right to the use of the bridge and approaches was determined by the decision in 163 U. S., and, further, that if mistaken in that, it had such right under the statutes of the United States and by the terms of the contract between the city of Omaha and county of Douglas, with which contract we are not concerned. To the contention the Union Pacific replied that so much of the opinion as dealt with the statutory obligation was *obiter dictum*. It also urged that the statutes were misconstrued, and that the status of the present Union Pacific Company differed so much from that of the then defendant as to make them inapplicable.

Disposing of the contention that the reference to the statutory obligation of the Union Pacific was *obiter*, the court said (p. 165):

"While the claim of the plaintiffs in that case was founded directly upon contracts, yet if there were a statutory duty to let them into the joint use of the bridge and its approaches that was enough to sustain a decree in their favor, and the contracts might be regarded as

simply relieving the court of the work of settling minor matters, such as method of use, compensation therefor, and matter of control. Indeed, the alleged invalidity of the contracts was rested largely on the scope of the statutes, and the duties to the Government and the public imposed thereby on the railroad company."

To the contention that the statutes had been misconstrued, the court replied (p. 166) that, "We see no reason to question the conclusion announced in the former opinion." The other contentions were also held untenable. The decree against the Union Pacific was affirmed, with some minor reservations which it is unnecessary to notice.

It was this decree that the Union Pacific Company was, in the present case, adjudged guilty of contempt for violating. The decree we have already set out.

The parties are in sharp controversy as to its meaning, but, necessarily, whatever ambiguity arises from some of its parts, its extent must be determined by what preceded it and what it was intended to execute—in other words, that the bridge act of 1871 is the measure of the rights given by decree in connection with the act of 1866 providing for a bridge across the Mississippi River at Quincy, Illinois, and other bridges. 14 Stat. 244. The latter act, as we have seen, provided that "all trains of all roads terminating at said river at or opposite said point shall be allowed to cross said bridge for reasonable compensation." And, as we have also seen, the act of 1871 was passed "for the more perfect connection of any railroads that are or shall be constructed to the Missouri River at or near Council Bluffs, Iowa, and Omaha, Nebraska." And the powers conferred and the use and protection of the bridge that should be erected were "governed and limited" by the provisions of the act of 1866. The two acts, therefore, express the powers conferred and the obligations imposed on the Union Pacific Company. And this court so construed them, saying, as we have seen, that

"the common object of both these acts was the more perfect connection of roads running to the bridges on either side of the river." A right to the "approaches and appurtenances" was given as necessary to the connection and to make it effective. It did not otherwise subject the property of the Union Pacific Company to the use of other companies. It bridged the river—"the transportation gap"—between Council Bluffs and Omaha, the country east of the river and the country west of it. It did no more. It did not intend to give to other roads a right in the terminal of the Union Pacific Company beyond what was necessary for a right of passage over the "gap," giving the same continuity to other roads which the Union Pacific Company had. That the act of Congress had this object the Circuit Court of Appeals did not deny. The court said (165 Fed. Rep. 850):

"It is true that the object of the requirement of the acts of congress was to bridge the transportation gap and to facilitate the transfer of cars passing between railroads east and railroads west of the Missouri river, but this fact did not deprive the court which was called upon to enforce this legislation of its jurisdiction to prescribe the limits and the terms of the use which the Pacific Company should allow, nor of its power and duty to exercise a wide and wise judicial discretion in fixing those limits and terms."

Of course the court had power to pass on the issues presented to it, and we might have to yield to its decision as *res judicata* if its decree was as broad as asserted, but we do not so understand its decree. It gave only what the Chief Justice, in 163 U. S., called "running rights." As we have already pointed out, the original charter of the Pacific road only impliedly authorized the building of a bridge across the river. The act of 1864 expressly authorized it, but the bridge contemplated was for the use of the Pacific Company only. No provision was made for other roads. The act of 1871 enlarged the powers of the

company, giving it means to construct the bridge, but at the same time put the obligation on the company of permitting its use by other roads, as we have seen, "indicating [we quote from 163 U. S. 587] a settled policy that all structures of this character should allow connecting roads to cross them with their cars, trains and engines." And this was the right which was given over the tracks, such right over the tracks being necessary to the right over the bridge. *Id.* 587, 588. The right to cross them, bridge and tracks, it will be observed, and thereby provide "for the more perfect connection of the roads east of the river with those west of it." That this was the purpose is expressed in many places in the opinion. The bridge was decided to be the principal and dominating thing, to which the rights in the tracks were accessory and only given as appurtenant and necessary as a means to avail of its use.

The Mason City Company would upset this order and make paramount the use of the tracks; indeed, make the use of the tracks independent of any use of the bridge, though the only rights it possesses are given by the act authorizing the construction of the bridge. It was because its railroad connected with the Union Pacific at Council Bluffs that it was enabled to invoke the provisions of that act. It now claims a right on the west side of the river to the use of tracks in connection with what it terms "a grain terminal" in Omaha, for which purpose it has purchased certain real estate. And it represents "that, in order to provide the necessary elevators and other special facilities, it has purchased other real estate, the title to which it has caused to be conveyed to the Omaha Grain Terminals, a corporation of the State of Nebraska, every share of the capital stock of said corporation being owned by" it. It sets forth, in detail, length of tracks and their connection with those of the Union Pacific, and the number and capacity of the elevators which are necessary to accommodate "the grain business naturally tributary

to the city of Omaha." It also sets forth that, as a carrier of live stock and live stock products, it must have facilities "in close proximity to the South Omaha stock yards." We quote these averments to illustrate the extent of the rights claimed. It is to accommodate the business thus described and its business as a common carrier that the Mason City Company asserts the right to use the tracks of the Union Pacific Company which connect with the tracks of other companies—specifically, in this case, with the Chicago, Rock Island & Pacific Railway Company. It was a prevention of the use of the latter tracks in order to deliver a car of stucco hauled by an engine of the Mason City Company to the Rock Island Company that was held to condemn the decree. If the Mason City Company had the right to deliver that car it had the right to deliver all cars, and the court so decreed, finding that there was a physical connection between the tracks of the Rock Island and the main tracks of the Union Pacific at South Omaha, and that by the terms of the decree the Mason City Company had "the right to run its engines, cars or trains" over such tracks, and from them "over and through the said connection on to the tracks of the Union Pacific Company at South Omaha."

The court, therefore, decided that the decree authorized the use of the Union Pacific track for local switching purposes and enjoined the prevention of such use. As we have pointed out, we do not think the decree justified the conclusion of the court. The rights asserted transcend anything given by the bridge act. The tracks of the Union Pacific Company, as urged by its counsel, are its property, and the supervision and control thereof cannot be taken from it and given to its connections except to the extent expressed in the bridge act, which gave, as we have seen, the use of the bridge and of the main and passing tracks as necessary approaches to the bridge. And it is of special significance that none of the "tenant companies" (parties

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in 163 U. S.) ever claimed such right except in one attempt by the Rock Island, after these proceedings to punish the Union Pacific officers for contempt.

We are, therefore, of opinion that the decree admitted appellee to the use of the "main and passing tracks" of the Union Pacific Company from their eastern terminus at Council Bluffs, only to a physical connection with the roads and at the places mentioned therein, including the bridge over which the tracks extend across the Missouri river between Council Bluffs and Omaha. And that such use was all that was necessary to constitute the road's continuous lines from east to west or from west to east.

The decree of the Circuit Court of Appeals affirming the order of the Circuit Court adjudging the appellants guilty of contempt of the decree entered August 12, 1903, is reversed, and the cause remanded to the Circuit Court for further proceedings in accordance with this opinion.